

3-1-1962

Some aspects of the Anglo-American controversy over neutral rights 1914-1915 primarily contraband and blockade

Gary R. Currie

University of Nebraska at Omaha

Follow this and additional works at: <https://digitalcommons.unomaha.edu/studentwork>

Recommended Citation

Currie, Gary R., "Some aspects of the Anglo-American controversy over neutral rights 1914-1915 primarily contraband and blockade" (1962). *Student Work*. 368.

<https://digitalcommons.unomaha.edu/studentwork/368>

This Thesis is brought to you for free and open access by DigitalCommons@UNO. It has been accepted for inclusion in Student Work by an authorized administrator of DigitalCommons@UNO. For more information, please contact unodigitalcommons@unomaha.edu.



SOME ASPECTS OF THE ANGLO-AMERICAN CONTROVERSY
OVER NEUTRAL RIGHTS 1914-1915 PRIMARILY
CONTRABAND AND BLOCKADE

by

Gary R. Garrie

A Thesis

Presented to

the Graduate Faculty of the Department of History
University of Omaha

In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

March 1962

UMI Number: EP73006

All rights reserved

INFORMATION TO ALL USERS

The quality of this reproduction is dependent upon the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if material had to be removed, a note will indicate the deletion.



UMI EP73006

Published by ProQuest LLC (2015). Copyright in the Dissertation held by the Author.

Microform Edition © ProQuest LLC.

All rights reserved. This work is protected against
unauthorized copying under Title 17, United States Code



ProQuest LLC.
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106 - 1346

PREFACE

This work deals with only some aspects of the controversy with Great Britain over neutral rights—primarily contraband and blockade, and, where necessary, brief mention is given to related problems. The difficulty concerning cotton the commodity is not treated as such for it is a paper in itself. This thesis examines the happenings from the first Order in Council, and the unsuccessful attempts by the United States to secure adherence to the unratified Declaration of London, to the conclusion of 1915.

The Kim Case, one of the most important cases to be adjudicated by an English Prize Court during this period, is also reviewed. Legal considerations of British policy regarding contraband and blockade are analyzed in light of the established principles of international law.

The writer would like to express his sincere gratitude to the personnel of the following institutions who offered invaluable aid in researching this thesis: The Gene Eppley Library, The Don Love Memorial Library and The Law Library of the University of Nebraska, The Omaha Public Library, and especial mention should be made to the staffs of the Council Bluffs Public Library and The Creighton University Law Library for numerous services rendered. Highest appreciation is also extended to Doctor A. Stanley Trickett under whose advisement the thesis was prepared and to Mrs. Donald Parrish who typed it for final presentation.

TABLE OF CONTENTS

| | PAGE |
|-----------------------------------------------------------|------|
| PREFACE | 11 |
| INTRODUCTION | 1- |
| CHAPTER | |
| I. THE DECLARATION OF LONDON AND EARLY PROBLEMS | 6 |
| London Naval Conference of 1909 | 7 |
| Order in Council of August 20, 1914 | 12 |
| The Declaration of London Imbroglio | 13 |
| British Contraband Objectives | 22 |
| Order in Council of October 29, 1914 | 25 |
| North Sea Military Zone | 26 |
| U.S. Note of December 28, 1914 | 28- |
| Great Britain's Position | 30- |
| Year-end Results | 34- |
| II. CONTRABAND AND BLOCKADE: A WALL IS BUILT | 37 |
| Gray's Note of January 7, 1915 | 37 |
| Lansing's Logic | 38 |
| Another British Note | 39 |
| A German Announcement | 40 |
| A Problem with Flags | 41 |
| First Compromise Attempt | 42 |
| The Reprisal Order in Council | 45/ |
| The U.S. Position | 47/ |
| Second Compromise Attempt | 51 |
| Diplomatic Activity | 55 |
| The <u>Securanea</u> Case | 58 |

| CHAPTER | PAGE |
|-------------------------------------------------------|------|
| The <u>Wico</u> Case | 59 |
| Bryan Resigns | 61 |
| Permanency of March Order in Council | 62 |
| Contraband Extensions | 62 |
| III. OLD PROBLEMS AND A SPIRITED REPLY | 65 |
| Insistence upon Neutral Rights | 65 — |
| The <u>Neeches</u> Case | 66 |
| Grey's Reply of July 23, 1915 | 68 |
| About Prize Courts | 71 |
| Cotton and the Contraband List | 72 |
| Responsibility of Discharging Costs | 74 |
| A Classic Note | 76 |
| Trading with the Enemy Act | 81 |
| Attempts at Commercial Controls | 83 |
| Preservation of Anglo-American Friendship | 85 |
| IV. BRITISH POLICIES AND INTERNATIONAL LAW | 88 |
| Belligerent-Neutral Relationship | 88 |
| Discussion of Contraband | 90 |
| Doctrine of Continuous Voyage | 93 |
| Foodstuffs as Contraband | 97 |
| Definition of Blockade | 99 |
| Violations of Blockade by Reversal Order | 99 |
| Doctrine of Continuous Voyage and Blockade | 100 |
| Distinction between Contraband and Blockade | 101 |

| CHAPTER | PAGE |
|------------------------------------------------------------------------------------|------|
| International Law and Prize Courts | 104 |
| The <u>Zemora</u> Case | 105 |
| Prize Court Proceedings | 107 |
| Summary | 108 |
| V. THE KIM CASE | 112 |
| Background | 112 |
| Points of Consideration | 113 |
| Claimants' Arguments | 114 |
| Crown's Position | 116 |
| Litigation Review in Opinion | 116 |
| Summation and General Opinion | 122 |
| Owners' Protest | 130 |
| Review of Decision | 131 |
| CONCLUSION | 134 |
| BIBLIOGRAPHY | 141 |
| APPENDIX A. List of Important Personages | 149 |
| APPENDIX B. Twenty-two Selected Articles of the Declaration of London | 150 |
| APPENDIX C. Selected Orders in Council and Contraband Procla- mations | 156 |

INTRODUCTION

In the mid-summer of 1914 the Great Powers stumbled into the First World War. As the conflagration of European states began, however, one powerful western nation stood alone--the United States of America. With an idealist president in the White House the United States Government expressed the general mood of its citizens by professing strict neutrality. For most Europeans it was not an unexpected position. To the belligerents, however, the United States, with its large population, one of the world's most powerful navies, and a rising industrial complex, represented a reservoir of military resources and supplies of staggering potential. Business interests in the United States, at least, were ready and eager to meet the combatants' merchandise demands.

Trade, whether domestic or foreign, generally involves the exchange of one thing for another and the transportation and delivery of such goods to the buyer. That commodities purchased in the United States by the warring Powers should be stopped in the course of delivery by the opposing forces in the War was to be expected as falling within the rights of nations as belligerents within previously established principles of international law. Nevertheless, when combatants interfered with international trade American shippers suffered as well as those of other neutral nations. The trade of the United States, however, represented much more of a danger to both the Central and Allied Powers than that of the other non-belligerents. For European statesmen the problem created by the awesome latent power of the United States was one of singular complexity and delicacy. In 1914, America's real capability was an unknown

quantity. If, however, the apparent strength of the United States was a true measure of its actual capacity her position in the conflict could be decisive. Any provocation by a belligerent which resulted in the United States' armed intervention could have meant ultimate defeat for the provocators. Officials in London and Berlin wrestled with the same difficult problem--that of determining how far each could go in pursuing policies calculated to defeat the other but which, at the same time, directly involved the international trade of the United States and its citizens.

The policy-makers in both Great Britain and Germany were genuinely desirous of the United States remaining at peace. It was never the official plan of Prime Minister Asquith and his Cabinet to actively seek United States armed intervention in support of the Allied cause. The goal of British policy was to achieve final defeat of the Central Powers by waging a full and unrelenting economic war without destroying Anglo-American friendship.

The man who bore the greatest responsibility for the success or failure of British foreign policy was Asquith's Foreign Secretary Sir Edward Grey. From the outbreak of the War until his resignation in December 1916, Grey's paramount desire was the perpetuation of peaceful Anglo-American relations. His task became more difficult as the War lengthened and demands from the public, press and the opposition in the House of Commons increased for more stringent economic measures against Germany. Grey, however, never lost sight of the necessity of American goodwill.

In the United States the mood was generally pro-Ally. This feeling was also evident among high ranking government officials. No one would seriously believe that Wilson could have entertained any sympathy for the policies, ideals or government represented by Kaiser Wilhelm.

The limits of Anglo-American friendship, nevertheless, were tested on more than one occasion prior to armed intervention by the United States in the War. The force behind this testing was the controversy over neutral rights which resulted from the British policies and practices implemented to effect the complete economic strangulation of the Central Powers.

Immediately following the outbreak of the War the British began to enlarge the contraband lists. Commodity classification became so inclusive that by the close of 1915, the lists were almost universal. The most serious problem, however, which threatened Anglo-American friendship was the Allied blockade established early in 1915. Although unique in character and unprecedented within framework of previously established principles of international law, the measure achieved great practical success. The curtailment of trade with the Central Powers imposed by the blockade not only affected American shippers but those of other neutral nations as well. The Allied blockade, however, was extended to include ports of neutral countries whose proximity to Germany, and excellent systems of transportation, offered the obvious possibility for the transshipment of goods to the enemy. During the entire period of United States neutrality the blockade was the most crucial problem affecting Anglo-American relations.

The British displayed consummate skill in the use or misuse of international law while pursuing their war programs. They were successful in extending the law of contraband to fit national policy and, at the same time, established and maintained a highly questionable blockade. Although the United States responded, on occasion, to British practices with a legal defense of neutral rights, none of the outstanding difficulties with Great Britain were satisfactorily resolved. In justifying their policies involving interference with neutral trade, officials at the Foreign Office used a simple but effective diplomatic defense mechanism. The British insisted that their actions were either a necessary response to German transgressions of international law or that they were merely applying previously established rules of international law to "new conditions of war."

The controversy between the United States and Great Britain concerning neutral rights quickly evolved into one of judicial review. The diplomatic dispatches between the two governments read remarkably like lawyers' briefs. Logical argumentation became immersed in legal point and counter-point. The problem for the United States was to appear impartial and neutral in its dealings with all belligerents. Although British interference with neutral rights demanded American protests, it was important that the remonstrances should not be of a sharpness which could destroy peaceful Anglo-American relations. For Great Britain the problem was somewhat more delicate. The British were forced to continue to apply economic pressures against Germany which resulted in undue interference with neutral commerce, but, at the same time, it was necessary for England

to insure continuance of the complex legal debate over neutral rights with the United States, and, in so doing, preserve mutual friendship.

Whether Americans liked to admit it or not Great Britain, to a large extent, controlled the exports of the United States while she continued to enjoy a reasonably good relationship with its government and its people. It was not by accident that such a situation prevailed. There were several contributing factors to the preservation of Anglo-American good-will. One of the most important of these factors was the intent and purpose of both governments to employ lengthy juridical arguments for the indefinite prolongation of a legal dispute until such time as the dispute was no longer necessary. The Anglo-American position was greatly facilitated by an especial German affinity for committing indelible diplomatic and procedural blunders.

Many other points of contention existed between the two English speaking governments. The highly irritating British practice of tampering with the mails and the equally infamous policy of blacklisting companies which nearly exhausted American patience are but a few. The list is almost endless. The beginning of the most serious problem, however, that of contraband (and later blockade) may be traced to the first contraband proclamation in August 1914, and the abortive attempt by the United States to win the belligerents' approval for the Declaration of London as a standard for naval conduct during the First World War.

CHAPTER I

THE DECLARATION OF LONDON AND EARLY PROBLEMS

It is not exaggerate to say that by 1907, the world was badly in need of machinery for the uniform administration of prize law. Relative to this need the representatives of the leading Maritime Powers assembled at the Hague in an important attempt to establish a convention for an International Prize Court. To a large measure this was accomplished. However, because of the inability of the delegates to accord specific agreement, the Second Hague Conference left some areas nebulous and uncertain. Failure to attain complete harmony on all points was partly due to the highly divergent views and dissimilar practices in naval conduct among participant nations.¹

England found some tenets unacceptable. The instrument seemingly had rendered the relationship between her navy and national existence ineffective.² Great Britain then suggested that a conference be held for the purpose of setting the vagueness and uncertainties of the Second Hague Conference aright. Sir Edward Grey, the British Foreign Secretary, expounded the object of the projected assemblage:

. . . arriving at an agreement as to what are the generally recognized principles of international law, within the meaning of paragraph 2 of Article 7 of the Convention, as those matters wherein the practice of nations has varied, and of then

¹ John Scott Brown (ed.), The Declaration of London (New York: Oxford University Press, 1919), p. 3.

² Ibid.

formulating the rules which, in the absence of special treaty provisions applicable to a particular case, the court should obscure in dealing with appeals brought before it for discussion.³

Pursuant to establishing needed naval codes delegates from Austria-Hungary, France, Germany, Italy, Japan, Russia, Spain, the Netherlands, and the United States, were invited by His Majesty's Government to a conference in London. The representatives convened in London on December 4, 1908, and remained assembled until February 26, 1909.⁴ There was an urgency of purpose and a sincere effort made to achieve standards or rules regulating international conduct which they called a "Declaration concerning the laws of naval war," and the Convention eventually became known as the Declaration of London.⁵ The document contained distinct lists of items which, in time of war, were to be treated as absolute contraband, conditional contraband or non-contraband materials.

It appeared, upon adjournment of the naval conference, that with the Declaration of London a way had been secured to carry into effect the Prize Court Convention and permanently establish a sound basis for judicial settlement of certain classes of international controversies through application of an accepted code. The tendency on the past had been to refuse to submit cases to impartial decision because of the lack of adequate machinery for reaching settlements.⁶

³Ibid.

⁴Ibid., p. 4.

⁵Ibid., p. 5.

⁶Ibid., p. 8.

Great Britain, nevertheless, was torn by factional dissent concerning the Declaration. One school felt that the rules sacrificed the interests of England as a belligerent. Another held the codes destroyed England's interests as a neutral.⁷ Obviously both could not have been true. Sir Edward Grey had offered some revealing instructions to the British delegation on December 1, 1908.⁸ He said at that time he would very much like to see a surrendering of all right to seize anything but absolute contraband, but added that such a proposal could find no place in existing international law so it would have to be relegated to convention. Thus the Declaration would have to recognize existence of both absolute and conditional contraband.⁹

Previously England had not been committed to the principles of definition or enumeration in dealing with contraband, and desired a list accepted as a correct statement of existing international law treating the subject:

- (1) Arms of all kinds, including arms for sporting purposes and their component parts.
- (2) Projectiles, charges, and cartridges of all kinds, and their component parts.
- (3) Powders and explosives designed specifically to serve war-like purposes.
- (4) Gun-mountings, limber boxes, limber, military wagons, field forges, and their component parts.
- (5) Military clothing and equipment.
- (6) Military harness of all kinds.
- (7) Camp equipment, and their component parts.
- (8) Armour plates.
- (9) Ships and vessels of war, and their component parts,

⁷ Ibid.

⁸ Ibid., p. 215.

⁹ Ibid.

provided these are of such a nature as can only be used on a ship of war.

(10) Instruments and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or of military or naval warlike material.

The list was drawn up by a provisional committee of the conference as stated.¹⁰ This was Article 22 of the Declaration with Article 23 allowing addition of those articles used exclusively for war to the absolute contraband list by notification addressed to the other powers or to their representatives. Any notification after the outbreak of war would be made to neutral powers only.¹¹

Grey remarked regarding conditional contraband:

The primary characteristic of conditional contraband is its warlike destination, and in drafting any rules on the subject, care should be taken to insure that condemnation should in no case be allowed unless there was such evidence as would establish, or lead to the destination of the goods was for the armed forces of the enemy, and not for the civil population of a place occupied by such forces.¹²

The English during the War, in adopting to "new conditions of war," sought unique evidence in proving enemy destination.

Although Great Britain certainly gained more than she conceded at the Conference, the Prize Court Bill introduced in Parliament to give binding effect to the Declaration of London, passed the House Commons but was rejected by the House of Lords.¹³ The dissident forces had achieved

¹⁰Ibid., pp. 216-17.

¹¹Ibid., pp. 117-22.

¹²Ibid., p. 218.

¹³Ibid., pp. 8-9.

a victory in securing the Convention's defeat. Norman Bentwich, an authority on international law, said before the vote in Parliament:

Great Britain should now be in a position to ratify the Hague Prize Court convention, when at least she has made the necessary changes in her national prize law. She has come out very well indeed from the international bargaining: she had the most to lose by the previous uncertainty; she has gained most by the settlement. At Paris, in 1856, she gave up one of her most powerful belligerent rights--the right to capture enemy property in neutral ships. Now in London she has not given up a single established belligerent right of value, her sole concession being on the question of convoy which is more apparent than real; and, on the other hand, she gained a number of safeguards for her neutral commerce, and a number of limitations of the alleged belligerent rights of other Powers. There is indeed a naval school which is bitterly hostile to the ratification of the Declaration, on the ground that by it England gives up certain national claims of long standing and concedes certain rights against which she has long struggled. But the claims we give up have not been effectively exercised by us, the rights we concede have regularly been practiced against us.¹⁴

In like manner the United States never ratified the Convention officially. The Senate, however, did advise its ratification on April 24, 1912.¹⁵

Critics had argued for many years that prize law was in theory international but in practice it was national in character. The administration of such law was subject to the prejudices and partialities of national judges.¹⁶ The logical effort to rectify such a situation by setting up codes of practice had been defeated at the very moment when success had seemed assured.

¹⁴Ibid.

¹⁵Ibid., p. 116.

¹⁶Norman Bentwich, The Declaration of London (London: Effingham Wilson, 1911), p. 2.

Some doubters complained that the Declaration of London made food-stuffs conditional contraband and explicitly forbade its becoming absolute contraband. The authors of the Convention did not wish it to be any type of contraband, but non-contraband.¹⁷ The Declaration restricted food-stuffs in contraband to only those foodstuffs proved going to the armed forces or government of an enemy state. In keeping with this ideally desired treatment of foodstuffs, the Doctrine of Continuous Voyage could not be applied to this class of commodities or to any conditional contraband.¹⁸ The real worth of the Convention, of course, was that it clarified existing nebulosity in many areas and produced a systematic listing of specifics for all to follow with regard to naval war and neutral rights. In respect to conditional contraband, for example, it offered a list which was unexceptionable, and replaced doubt with certainty.¹⁹ Article 65 further insured the proficiency of the Convention, by requiring that the Declaration had to be treated as whole and could not be separated.²⁰

For all its projected practical effect and grandiose purpose the Declaration of London was never used as an official instrument for settling maritime disputes among the world's family of nations. It is, nonetheless, both important and interesting to note the words of Norman Bentwich who, speaking about conditional contraband as regards foodstuffs,

¹⁷Ibid., p. 31.

¹⁸Ibid., p. 74.

¹⁹Ibid., p. 68.

²⁰Ibid., p. 154.

said "and to allow capture upon suspicion that an eventual belligerent destination was intended would be an excessive interference with neutral trade which would inevitably cause friction."²¹ The Declaration had carefully required affirmative proof that goods were destined for the use of the armed forces or a governmental department of an enemy as the basis for the right to seize conditional contraband.

If war breaks out among nations of considerable power, maritime commerce must to some extent be affected. Each belligerent does all possible to cripple and render ineffective trade with its enemies. In pursuit of this goal, belligerents treat neutrals with suspicion and mistrust. Thus arises interference with neutral commerce and the resultant resentment by those non-warring nations carrying on legitimate trade.

Armed hostilities erupted in Europe in July, 1914. America's intention to remain at peace surprised few, and, in many cases, was received with genuine pleasure. Great Britain enjoyed unchallenged supremacy on the high seas and her officials immediately reasoned the possibility of applying such economic pressures as to insure a hasty German defeat.

The legal machinery to be used was the implementation of a series of Orders in Council designed to sever the Central Powers from neutral commercial sources. The first Orders commenced in August, 1914, (the first one--August 6). On August 20 of that year the Declaration of London was practically destroyed in meaning when an Order in Council bearing

²¹Ibid... p. 75.

that date was issued.²² The Order greatly extended the contraband lists, but this extension was hardly as irritating as the second modification which permitted the Allies to seize conditional contraband even though discharged at a neutral port.²³ It decreed that conditional contraband was liable to capture regardless of the port of destination on the presumption of ultimate enemy destination if consigned to or for an agent acting under the control of enemy states. The British had thus modified the Declaration of London in an effort to achieve the economic starvation of Germany.

Early in August the United States had initiated efforts to obtain complete acceptance of the Declaration of London by both sides as a code to be followed during the War. On August 7, 1914, the Imperial German Government replied to a verbal inquiry by the United States Ambassador in Berlin stating that they would accept and observe the provisions of the Declaration for conduct of naval warfare during the conflict if the other nations would also acquiesce.²⁴ The British and French agreed but with a few "modifications" these being the replacement of the absolute and conditional lists by more inclusive ones. The Allied modifications were manifest in the Order in Council of August 20, 1914.

²² Charles Seymour, American Diplomacy During the World War (Baltimore: The John Hopkins Press, 1934), p. 34. Hereafter cited as American Diplomacy.

²³ Ibid.

²⁴ Foreign Relations of the United States, 1914, Supplement (Washington: Government Printing Office, 1928), p. 224. Hereafter cited as For. Rel., U.S., 1914, Suppl.

It was unreasonable to assume or even hope for British acceptance of the Declaration in toto for the document assured free passage of conditional contraband if discharged at a neutral port, and thus made it possible for Germany to provision herself through the northern neutrals.²⁵ The United States, however, continued to strive for total adherence to the Declaration and pursued the matter vigorously.

In late September, 1914, lawyers at the State Department drew up a protest regarding the Order in Council (actually written by Cone Johnson State Department Solicitor).²⁶ It was so worded that it read remarkably like an ultimatum. The note was sent to Wilson for approval but at the moment of arrival the President was quite tired and did not wish to read it.²⁷ He was informed, however, that it was to be dispatched the next morning whereupon he examined it and was astonished by the language used.²⁸ Wilson refused to allow the message to be sent and ordered it returned to the State Department for revision. Robert Lansing, the Department's Counsel, prepared a new note of less menacing tone and conveyed it to Wilson for final approval to assure its presence in the next pouch.

The new note instructed the United States Ambassador in London, Walter Hines Page, to see Sir Edward Grey and urge upon him the grave

²⁵Seymour, American Diplomacy, p. 32.

²⁶Stephen Gwynn (ed.), The Letters and Friendships of Sir Cecil Spring-Rice (Cambridge: The Riverside Press, 1929), II, 233.

²⁷Ibid.

²⁸Ibid.

concern of the United States regarding proposed changes in the Declaration of London which so materially affected neutral rights. Especially noxious were Articles 3 and 5 of the August 20 Order in Council.²⁹ The note further expressed the hope that the British would "consider the advisability of modifying their Order in Council."³⁰

Ambassador Page complied with the directive and held a conversation with Grey in which he impressed upon the Foreign Secretary the points covered in the note and Grey emphasized that he did not wish to provoke the offense of the United States Government or public criticism. Grey maintained that Britain's only concern was the prevention of food and materials for military use from reaching the enemy.³¹

The strong position taken by the United States came as a complete surprise to England after so long a time had elapsed since the promulgation of the August 20 Order in Council.³² The note had concerned the proposal to make the Declaration of London the law of naval warfare in the War as modified by the British Order in Council. The British position regarding the Declaration, according to Grey, was the same as the United States toward a treaty the Senate had refused to approve.³³ In a note to Spring-Rice, British Ambassador to Washington, dated September 28, 1914, Grey informed him that he had reminded Page that Parliament had

²⁹For. Rel., U.S., 1914, Suppl., p. 232.

³⁰Ibid.

³¹Ibid.

³²Gwynn, op. cit., II, 234.

³³Ibid.

not observed the Declaration and Britain strove for two objectives only: (1) Restrict the supply to Germany of materials essential to war munitions manufacture; (2) Restrict supplies for the German Army while at the same time this was to be accomplished with minimum interference to neutral commerce.³⁴ The British were not willing to withdraw their proclamation at once in the absence of some measure to insure prevention of needed supplies from reaching Germany.

Grey then proposed to Page that he would draw up a new proclamation of contraband to supersede the previous one. He felt it should not mention the Declaration of London for the Foreign Secretary did not feel that an unratified document to which so much exception had been taken by Parliament should be held to constitute a new doctrine of international law.³⁵ Page cabled Lansing on September 30, 1914, that Grey had agreed to make a new list of absolute contraband and prepare a new Order in Council replacing all previous Orders which had modified the Declaration of London.³⁶

Until the new proclamation was issued Britain relied upon an embargo by the Government of the Netherlands on the exportation of food-stuffs. Those ships which were at the time detained were released and neutral vessels were not interfered with on the ground of containing

³⁴For. Rel., U.S., 1914, Suppl., p. 234.

³⁵Ibid., p. 238.

³⁶Ibid., p. 235.

foodstuffs. To pacify public opinion in the United States, Grey agreed to publicly announce that Britain intended to revise her Order in Council with regard to contraband.³⁷

The new Order was to be formulated in view of suggestions made in a meeting between Spring-Rice and Lansing. The points were as follows:

(1) Certain articles like motor oil, wire fencing, motors, etc., which may be shown by recent events as exclusively used for military purposes in the present operations might be added to the list of absolute contraband as completed in Article 23 of the Declaration of London.

(2) Articles like foodstuffs, if the Dutch Government prohibited their supply to either belligerent could be freely imported into Holland if consigned to the Dutch Government or persons designated by them.³⁸

On October 9, 1914, Page cabled a draft of the Contraband Order in Council devised by the British Government.³⁹ After studying the proposal, Lansing instructed Page to see Grey and present to him certain enumerated objections:

(1) The proposed Order did not accept the Declaration of London without modifications.

(2) The proposed Order left unrepealed Articles 2, 3, 4 and 6 of the previous Order.

(3) The proposed Order purported to repeal Article 1 of the August proclamation but in fact re-enacted it with the extension of the contraband list which additions could have been obtained if the British had accepted the Declaration of London originally.

(4) Under the terms of the Article replacing number 5 in the previous Order it in fact permitted capture of a ship bound for the port of one neutral country if the cargo was consigned to a person resident in another country not at war.

³⁷Ibid., p. 238.

³⁸Ibid., footnote no. 1, p. 238.

³⁹See Appendix for revised list.

(5) The proposed Order introduced a new and unprecedented restriction upon neutral commerce under Section 4. It in effect said that at the discretion of one of His Majesty's Principal Secretaries of State, a neutral country may be given treatment of enemy character and that bona fide trade of a neutral country with such a country may be subjected to the rules which are applied to contraband trade with enemy territory.⁴⁰

It was apparent that Great Britain did not intend to retreat from her policies regarding the contingency of economic strangulation of Germany whatever the interference with neutral commerce. It was also equally evident that England did not intend to accept the Declaration of London without modifications which she felt necessary in her conduct of the War.

Grey had replied previously to the American note of September 28 defending British action as a necessary measure to achieve its purpose of not allowing Germany to receive supplies for her war machine through contiguous neutral ports. The situation was such that England had to depart from the strict rules of the Declaration of London regarding the absolute contraband list and apply more stringent methods to conditional contraband where a neutral country was used as a base for supplying the enemy's war machine.⁴¹ Grey was fully aware of the possibility and implications of a German victory as was the entire Foreign Office.

In mid October 1914, Lansing had once again communicated to Page the desire of the United States to secure an Order in Council adopting the Declaration of London without amendment. He explained that the

⁴⁰For. Rel., U.S., 1914, Suppl., p. 252.

⁴¹For. Rel., U.S., Lansing Papers, I, 251.

United States was not warranted to offer any suggestion to the British Government which would serve self interests and at the same time serve British desires. Lansing instructed Page to approach Grey with a proposal to secure acceptance of the Declaration and present it in such a way as to make it appear that it was the Ambassador's own idea.⁴²

Lansing had reasoned that the British Government should issue an Order in Council adopting the Declaration of London without reservation. Britain could then promulgate a subsequent proclamation adding articles to the lists of absolute and conditional contraband by virtue of the authority contained in Articles 23 and 25 of the Declaration. This announcement would in turn be followed by another stating that England was convinced that a port or the territory of a neutral country was being used as a base for the transit of supplies for an enemy government. Finally, in light of the above steps, an announcement could be made declaring that a port or territory had acquired enemy character in so far as trade in contraband was concerned, and any vessel trading with said port or territory would be subject to the rules of the Declaration governing trade with enemy territory.⁴³

Lansing admitted that such action would be a new principle in international law, but offered the excuse that where the Declaration of London had failed to provide for "exceptional conditions as exists" a nation had the right to reasonable interpretation to prevent supplies

⁴²For. Rel., U.S., 1914, Suppl., p. 250.

⁴³Ibid.

from reaching the enemy. In closing his instructions, Lansing once again cautioned Page to in no way suggest that the Government of the United States was by any means responsible for the proposal. The Counselor said, "I repeat that any suggestion, which you make to Sir Edward Grey, must be done in an entirely personal way and with the distinct understanding that this Government is in no way responsible for what you may say."⁴⁴

The British responded coolly to this piece of legal chicanery. They had rejected the Declaration of London three times and in Lansing's attempt for the fourth pursuant to his reasoning Grey replied, "Do you mean that we should accept it and then issue a proclamation to get around it?"⁴⁵

Page sent a letter to Secretary of State Bryan dated October 19, 1914, in which he stated that Grey would not accept the Declaration, first because Parliament had failed to ratify it and secondly because the document forbade the addition of items such as iron ore and rubber to the contraband list and these materials were necessary for the manufacture of war goods. Grey insisted upon the addition to the conditional and absolute contraband lists of certain articles which England felt necessary to include. He also reserved the right to stop cargoes of contraband or conditional contraband consigned in blank ("to order") to a neutral country and which were eventually destined for that country.⁴⁶

⁴⁴For. Rel., U.S., 1914, Suppl., p. 250.

⁴⁵Burton J. Hendrick, The Life and Letters of Walter Hines Page (New York: Doubleday, Page and Company, 1925), III, 182.

⁴⁶For. Rel., U.S., 1914, Suppl., pp. 253-54.

Page had not achieved his ends and it became obvious that Great Britain planned no concessions relating to in toto acceptance of the Declaration. The Ambassador felt that the United States had lost ground by insisting upon its acceptance for the fourth time.⁴⁷ Page intensely disliked games of subterfuge and had been something less than enthusiastic about representing State Department instructions in dealing with his personal friend Sir Edward Grey. He actually informed Wilson through Colonel House, the President's most trusted advisor, that if he (Page) had to again seek British acquiescence to the Declaration of London he would resign.⁴⁸

The futility of gaining complete adherence to the Convention became apparent and the request for its acceptance was formally withdrawn on October 22, 1914, whereupon the United States retreated to the "previously existing rules and precedents of international law," without reference to the London codification.⁴⁹ America had chosen a logical if naive approach to the settlement of disputes over neutral rights and had been defeated.

If the Declaration of London had been accepted without reservation it would have been impossible for Great Britain to have controlled supplies to Germany. No nation was more aware of this fact than England. A severe blow would have been struck at the most important tactic of the

⁴⁷Hendricks, op. cit., III, 182.

⁴⁸Ibid., p. 188.

⁴⁹Walter Millis, Road to War America 1914-1917 (Cambridge: The Riverside Press, 1935), p. 88.

Allies--economic starvation of the Central Powers. Sir Edward Grey most sententiously summed up the whole question concerning the code saying, "The question is not worth pursuing: if the Declaration had been ratified, it would have been broken."⁵⁰ One practical result of the United States' official withdrawal for complete acceptance of the convention, according to a communique from Page, was that the British released every American ship and cargo detained but one within forty-eight hours after formal announcement.⁵¹

The British plan regarding contraband was quite simple. First, they were forced to place on the contraband lists all articles essential for military use under modern conditions of war. Secondly, they had to obtain acceptance of such a list by the United States even if some articles placed in the absolute list were on debatable ground. With justification the British continually pointed out that many articles previously considered non-contraband or conditional contraband had since become militarily essential.

It was decided to first concentrate upon copper, iron ore, and rubber.⁵² Because the Allies were dependent upon the United States for munitions, Great Britain had to gain American acceptance to these articles and yet prevent any quarrel serious enough to end the source of supply. America did finally acquiesce to the additions of copper and

⁵⁰ Lord Grey, Twenty-Five Years (New York: Frederick A. Stokes Company, 1925), II, 106.

⁵¹ Hendrick, op. cit., III, 189.

⁵² Grey, op. cit., II, 109.

rubber thus allowing the British to detain vessels carrying these commodities when bound for German. However, as Grey pointed out, this was of little value because of Germany's "contiguous relationship with other countries through whose ports goods could pass."⁵³ This was accomplished despite the fact that the addition of copper, iron ore, and rubber were distinctly forbidden by the Declaration of London for which the United States had so earnestly sought acceptance. The necessity for the British, however, was to seize such cargoes going to neutral ports, and this was the point of contention between the two governments.

Great Britain always insisted upon the conformity of naval warfare to strict interpretations of existing international law, but in her own case, repeatedly departed from them when it was advantageous to do so.⁵⁴ Resentment against British actions began to increase in America despite generally pro-Ally sympathies.

In London, Page insisted that all of the ambassadors he knew did not like British policies but frankly felt that they had no other choice but to concede them. Nobody in the foreign diplomatic circle saw a tenable case against the Allied position according to Page.⁵⁵

Ambassador Page, however, was an Anglophile of the first order. He would not hesitate to water-down instructions at his own discretion when he felt the position of the United States was presented too strongly.

⁵³Ibid.

⁵⁴Robert Lansing, War Memoirs of Robert Lansing (New York: The Bobbs-Merrill Company, 1935), pp. 110-11.

⁵⁵Hendrick, op. cit., III, 178-79.

Page's predilection for things British eventually destroyed to some extent the worth of his counsel with the President. As George M. Trevelyan wrote in part:

Page indeed became too open in his sympathy with the Allies to carry much weight with a President who hoped to preserve Neutrality, but the detailed treatment of one dispute after another arising between England and America over contraband was greatly facilitated by the good understanding between Page and Grey at the London end of the cable.⁵⁶

A short time after Page delightedly informed the Foreign Office that the United States had withdrawn its insistence for adherence to the Declaration of London he cabled Lansing advising him that Grey felt the State Department would not formally protest the proposed new Order in Council containing revised lists of absolute and conditional contraband. The impression created was that the United States would reserve her rights under international law and treaties entering protests in particular cases where such rights were interfered with by Britain.⁵⁷ The announcement created a favorable atmosphere in England.

Page then advised Lansing on October 25, 1914, that the new Order in Council would be substantially the same as the draft proposal cabled earlier. Lansing replied that the United States Government could not foretell the effect of the new Order in Council or of the revised contraband list upon public opinion, and wanted the Foreign Office to understand

⁵⁶George M. Trevelyan, Grey of Fallodon (Boston: Houghton Mifflin Company, 1937), p. 353.

⁵⁷For. Rel., U.S., 1914, Suppl., p. 258.

that America had not waived her right of protest against the inclusion of any particular article in the lists if it was felt injurious to neutral commerce.⁵⁸

Five days later the Order in Council of October 29, 1914, was announced which supposedly embodied partial concessions to the United States. It is hardly necessary to remark that the Order instead of granting favors to American views in reality imposed heavier burdens upon neutral commerce.

Britain reserved the right to interrupt conditional contraband if consigned "to order." It also, for all practical purposes, made the neutral assume the *onus probandi* which traditionally belonged to the belligerent. A neutral vessel with papers showing a neutral destination which proceeded to a neutral port regardless of the destination on her papers would be liable to capture and condemnation if encountered before the end of her next voyage. The British, as a concession, established a special committee to authorize the release of goods without the insistence of complete evidence of title being produced.

The inhibitive pressures by Great Britain upon neutral commerce caused consternation among many sections of the American public. Tammity, the President's private secretary, stated in late October that "pressure upon us at the White House for satisfaction at the hands of England grew more intense each day."⁵⁹ Many American shippers, however, did not

⁵⁸ *Ibid.*, pp. 259-60.

⁵⁹ *Willis, op. cit.*, p. 110.

demand decisive action against Britain for, although commerce was subjected to interference, they were enjoying a very profitable trade with the Allies and did not wish to endanger the arrangement.

On November 3, 1914, the Admiralty declared the whole North Sea a military area which was, according to Count Bernstorff, German Ambassador to the United States, "in flagrant violation of international law."⁶⁰ All ships were warned of the dangers contingent upon entry except in strict accordance with Admiralty directions. Mines had been sewn in the waters so vessels had to stop and get pilots to safely negotiate the fields. This offered a convenient excuse to have neutral ships stop in British ports prior to entering and, of course, be searched. The United States Government took no official notice of the declaration making the North Sea a military zone.⁶¹

Great Britain had initiated and expanded the policy of taking vessels into Allied ports for visit and search--a singularly infuriating practice to American shippers. The right of a belligerent to visit and search "on the high seas" was readily conceded, but the British practice was not in keeping with established principles of international law. The United States protested against the policy of detaining vessels "upon preemptions created by special municipal enactments which are clearly at

⁶⁰ Johann H.A.H.A. von Bernstorff, My Three Years in America (New York: Charles Scribner and Sons, 1920), p. 127.

⁶¹ Seymour, American Diplomacy, p. 36.

variance with international law and practice."⁶² The Allies insisted that the size of modern vessels made modifications of old practices necessary, and desired nothing more than the adoption of an existing, established right to new commercial conditions. No final settlement of the question was ever reached.⁶³

The neutral ships were usually taken to the Downs or Kirkwall on the Scottish coast in the north. In the Mediterranean area visit and search took place at Gibraltar or Alexandria. The inspection was at all times very thorough as one may gather from the fact that from January to July, 1915, 2466 ships arrived in neutral ports on the North Sea and 2132 were minutely searched.⁶⁴

Spring-Rice wrote Gray on December 11, 1914, advising him that while it was necessary for Britain to take ships into port for visit and search the long and costly process of detention of vessels on suspicion of contraband was causing wide spread complaints in America.⁶⁵ Although it is true that nearly everything England initiated regarding interference with shipping caused concern, whether extending and adding to contraband lists of declaring military zones, the question of right of visit and search was, perhaps, one of the most exasperating.

⁶²Malbone Watson Graham, Jr. The Controversy Between the United States and the Allied Governments Respecting Neutral Rights and Commerce During the Period of American Neutrality 1914-1917 (University of Texas Bulletin, No. 2344, Austin, Texas: University of Texas Press, 1923), p. 92.

⁶³Seymour, American Diplomacy, p. 37.

⁶⁴Ibid., p. 38.

⁶⁵Gwynn, op. cit., II, 246.

In late December, 1914, Great Britain issued another proclamation regarding contraband of war.⁶⁶ It again enlarged and extended previous Orders pertaining to the contraband lists. New categories were appended and old ones expanded. The lists were becoming so universal that the British were declaring their right to stop almost everything. Slowly, but inexorably, the English had revised and extended absolute and conditional contraband while purporting to give concessions to, and champion for, neutral commerce. The Foreign Office continually accused Germany of the grave misuse of international law while, at the same time, Britain was unquestionably guilty of flagrant violations. Wherever and whenever exigencies of war necessitated reconstruction of existing international law Great Britain did not hesitate to make the desirable corrections.

The United States sent a note disapproving of general British methods and conduct dated December 28, 1914.⁶⁷ It was delivered in a friendly spirit. The note was originally written by Cane Johnson, but was revised by Lansing, and finally again by Bryan. The United States expressed some displeasure that after five months of war the British had not altered their policy and lessened interference with international trade among neutrals. Further, the United States Government did not intend to treat with the subject of the propriety of the inclusion of certain articles in the absolute and conditional lists although they were certainly open to objection. The complaint rested with the treatment of both classes of goods when destined to a neutral port. There were

⁶⁶ See Appendix C.

⁶⁷ For. Rel., U.S., 1914, Suppl., p. 373.

unwarranted detentions on the ground that absolute contraband cargoes, although shipped to neutral countries, were detained because that country had not prohibited the exportation of such articles.⁶⁸ Equally perplexing was British indecision in the treatment of like cargoes. The United States desired information regarding British plans for carrying out their proclaimed policies with consistency.

It was also mentioned that British policy concerning conditional contraband was equally unjust. A number of American cargoes of foodstuffs had been seized when bound for a neutral port without positive proof that the cargoes were in reality intended for enemy use.⁶⁹ It could not be held that mere suspicion was conclusive evidence. The British declaration that consignments of conditional contraband "to order" when shipped to a neutral port presumes enemy destination was untenable in and contrary to all international law. Lastly, America could not condone the English practice of taking vessels into port for search in an endeavor to uncover necessary evidence of contraband or "upon presumption created by special municipal enactments which were at variance with international law."⁷⁰

Page reported that comment about the note by the English Press was in general "kindly but perfunctory."⁷¹ Some segments of the British felt

⁶⁸For. Rel., U.S., 1914, Suppl., p. 373.

⁶⁹Ibid.

⁷⁰Ibid., p. 374.

⁷¹Ibid., p. 377.

the message was prompted by German propaganda and unofficial circles thought it due to domestic policies. There was some feeling in Britain that the United States wished to grow wealthy at England's expense.

In mid-December, 1914, Consul General Skinner (London) reported that the British Government had appointed a committee to consider claims made by neutral third parties against ships and cargoes which had been condemned or detained by British Prize Courts. At first the committee handled only those claims against ships or cargoes upon which sentence had already been passed. Also, according to Skinner, many shipments of lumber, tobacco, agricultural implements, cotton, and the like had been detained four months or more without being released. Since the goods did not appear liable to condemnation he could not understand how the British could legally hold them.⁷²

Great Britain, at her own admission, was not concerned with the niceties of international law, but with rendering the enemy ineffective by whatever means available. The British from the outset of the War had embraced the policy of transferring every possible article of peace time commerce to the absolute contraband list without undue risk of decisive American protest. Practically everything became conditional contraband. Conditional contraband must be proved bound for enemy destination, a rather simple project since the British Prize Courts ruled upon the "proof."⁷³

⁷²For. Rel., U.S., 1914, Suppl., p. 367.

⁷³Ibid., p. 111.

The contraband rules as enforced by the Entente Powers all but ended direct trade with Germany. Unfortunately, however, it was not only direct trade with Germany which was affected. The application of rules of international law was held so general by Great Britain that the barest suspicion of a cargo was enough to condemn it as carrying enemy destination.

The build-up of an extra legal superstructure by the Allies was a cautious, clever undertaking. Great Britain was not willing to cause a complete break-down of peaceful relations with the United States. In September, after the outbreak of the War, Grey had taken the position that American friendship was more important than the interruption of German imports.⁷⁴ When the Contraband Committee was formed over a year later (November, 1915), looking to the controlling of German imports through neutral countries, Grey advised the committee members of the importance of Anglo-American friendships.⁷⁵

The Foreign Office was constantly under pressure to increase economic warfare, both from France and the British Admiralty. The War Office believed that the only avenue to final victory was the exhaustion of Germany. Inside Britain public demand grew for a blockade. There was a feeling by the English Press that pro-Ally sympathy in the United States

⁷⁴ Ernest R. May, The World War and American Isolation 1914-1917 (Cambridge: Harvard University Press, 1959), p. 18.

⁷⁵ Trevelyan, op. cit., pp. 346-47. This Contraband Committee became one of the most important concerns for winning the War according to Trevelyan.

was too strong to allow an eruption of Anglo-American friendship. Generally speaking there is little doubt that the American people were in favor with the Allied cause. Wilson once remarked to Spring-Rice that ninety per cent of the people were sympathetic toward the Allies.⁷⁶

The munitions question divided sections of the United States. The industrial Northeast, of course, desired such shipments while many in the South and West wanted a munition embargo. A bill to effect an embargo was introduced by Senator Hitchcock of Nebraska but was defeated. Sir Edward Grey hinted that passage of such legislation would be considered an un-neutral act.⁷⁷

The State Department published a note to American citizens explaining their right to sell contraband articles to belligerent governments. The paper pointed out that citizens were not prohibited by international law, or by national statute or treaty from selling such articles. Furthermore, a neutral government was not compelled to prohibit such sales, but articles of contraband to belligerents were subject to seizure under established principles of international law.⁷⁸

The Administration as a whole was against any arms and munitions embargo. American business was willing to sell the necessary engines of war to belligerent nations and the Government recognized their established right to do so. Such commodities were needed by both warring

⁷⁶Gwynn, op. cit., II, 245.

⁷⁷Millis, op. cit., p. 100.

⁷⁸United States Congress, Senate, 63d Congress, 2d Session, Congressional Record, Vol. LI, Part 16 (Washington: Government Printing Office, 1914), p. 16814.

groups but particularly so by England. Germany, in fact, pushed hard to achieve an embargo on munitions in an effort to sever the Allies from the American market.⁷⁹ Great Britain's dependency upon neutral munitions was far greater than that of the Central Powers.

Early in the first autumn of the War the State Department issued an order prohibiting the publication of ship's manifests thirty days before sailing. According to Sir Cecil Spring-Rice the ban had been secured by an agent of Germany.⁸⁰ This policy hardly detracted from continued British interference with commerce. Many American shippers, to protect themselves, wanted British agents to inspect the cargoes before sailing and certify manifests as to their correctness. The prohibitive order had in effect made every shipment suspect to the British. To obviate unnecessary detentions, His Majesty's Government proposed negotiations directly with American private firms for the issuance of export permits. The companies participating had to give assurances that they would not export to Germany or to neutral countries not having re-export embargoes, products to be used for war.

Before the British would negotiate, however, the United States had to recind the order forbidding publication of ship's manifests thirty days prior to sailing. The English also demanded that the manifests be correct, and finally, desired the United States Government to admit to

⁷⁹Seymour, American Diplomacy, p. 12.

⁸⁰Gwynn, op. cit., II, 246.

the British right to seize products consigned "to order."⁸¹ In February, 1915, the United States did in fact recind the manifest order and after that time no more protests were made over "to order" consignments.⁸² Many Americans felt that it was better to accept British rules and continue business than to fall back upon abstract legalized arguments over neutral rights.

The British were acquiring a phenomenal supremacy over the high seas and neutral shipping. Gradually, but very successfully, they had achieved a control over a large segment of the American economy.

By the close of 1914, the United States had won nothing by juridical review in her fight for the protection of neutral rights. Ships were seized upon mere suspicion and detained at great cost to shippers. Without formality of capture the British sent neutral ships into port for purposes of visit and search. Interference with cargoes consigned to neutral countries was continued. Extensions and additions to the contraband lists had for the most part been accepted. The practice of taking vessels into port for visit and search, although protested against, was all the more earnestly pursued. The United States suffered a stinging defeat in first attempting to secure the Declaration of London as a naval code to be followed during the War. This failure augured many more failures, for from that point on the United States never obtained a major concession from the British.

⁸¹ Alice M. Morrissey, The American Defense of Neutral Rights 1914-1917 (Cambridge: Harvard University Press, 1939), pp. 38-39.

⁸² Ibid., p. 40.

Britain had achieved contraband classification for every planned item but one--cotton. An attempt was not actually made at this time to place it on the list for Grey was of the opinion that if cotton had been early declared contraband it might have provoked a munitions embargo by the United States.⁸³ In the summer of 1915, however, Great Britain did in fact declare cotton contraband.

Content to rely upon judicial arguments within the framework of existing international law, the United States failed to initiate and utilize powerful economic pressures to accomplish her ends. What is more, the diplomatic correspondence was something less than demanding. The British always replied in soothing tones but yielding nothing.

Sir Edward Grey was in a very delicate situation. The Admiralty, War Office, and general public were increasing demands for more severe economic pressures against Germany. Grey could not, at the same time, pressure too rapidly at the expense of American friendship. The preservation of a sound relationship was always uppermost in his mind. The position of the United States was at all times the ultimate determinant in any final victory. Grey understood this and refused to embark upon any direction which might have alienated America. He enjoyed the friendship and confidence of the foreign diplomats in London. The Foreign Secretary was careful not to press or push too far.

Resentment of British policies, nonetheless, was apparent in the United States. The English had practically ceased observing any distinction between contraband and conditional contraband which enraged many

⁸³Trevelyan, op. cit., p. 349.

American shippers. The State Department, according to Lansing, was deluged with protests concerning interference with neutral rights.⁸⁴ As Great Britain extended and tightened measures in attempting economic starvation of Germany, anger and disapproval rose proportionately in the United States. Tension continued to mount and diplomatic notes between the two governments became longer. Judicial niceties had most certainly failed to force British adherence to neutral interpretations of international law. Legal verbosity had preserved peaceful relations between the two countries and this, of course, was the intent on both sides of the cable.

⁸⁴Lansing, op. cit., p. 121.

CHAPTER II

CONTRABAND AND BLOCKADE: A WALL IS BUILT

America, during the first five months of the War, had been unsuccessful in its attempts to achieve a satisfactory solution of the early problems with Great Britain. January, 1915, marked the beginning of a new year which would see the old controversies continued. The United States had neither taken a decisive position in its defense of neutral rights nor seemingly desired to effect one. The Government, represented by the State Department, wished to prolong the legal arguments as long as possible.

Apprehension had been apparent among business interests regarding the December note until it was made public. Many had feared that the United States might have protested too strongly.¹ Their fears were allayed, however, when the note turned out to be conciliatory in tone and expressed hardly more than a restatement of the United States position, including evidence of the intention to have recourse to rightful claims after the War.

Sir Edward Grey dispatched a note to Secretary of State Bryan under date of January 7, 1915, containing preliminary comments regarding the American note of December 28.² It pointed out that Britain had not in fact unduly interfered with neutral commerce when that commerce had

¹Charles Callan Fansil, America Goes to War (Boston: Little, Brown and Company, 1938), p. 187.

²For. Rel., U.S., 1915, Suppl., pp. 299-302.

been legitimate. Grey maintained that foodstuffs should not be detained without presumption of ultimate enemy destination and this rule had been strictly followed. His Majesty's Government was prepared to examine any specific instances to the contrary. Grey also upheld the British practice of taking ships into port for visit and search. He considered it essential under modern conditions of war that where real ground for suspecting contraband cargoes existed the ship must be taken into port to administer a thorough inspection. The Foreign Secretary referred to several instances where rubber had been shipped from the United States under another designation.³ Great Britain was not contesting the general law upon which the United States based her stand, but was merely striving to stop all contraband trade with the enemy.

Counselor Lansing suggested to Wilson on January 11, 1915, that Grey's note was an attempt to justify British action with a definite purpose of reducing public irritation in the United States, and at the same time, refusing any assurances that trade conditions with neutrals would be relieved.⁴

No distinction was made between absolute and conditional contraband. Little was said in the British note concerning the uncertainty of the seas which was one of the chief complaints. Specifically, that the danger of seizure and detention deterred shippers from sending goods, and steamship companies refused to carry cargoes. A further complication was

³For. Rel., U.S., 1915, Suppl., pp. 299-302.

⁴For. Rel., U.S., Lansing Papers, I, 261.

that shippers were, in many instances, refused insurance because of trade conditions.

Lansing considered "suspected cargoes" a term that required explanation. The United States also complained of the way in which the admitted rule of foodstuffs was applied by the British. Almost any excuse could detain cargoes. It was not a question of the justice rendered in British Prize Courts, but the action prior to Prize Court proceedings which was objectionable to the United States.⁵ Lansing further reasoned it was not the concern of the United States that a danger existed for transshipment and re-exportation of goods to the enemy through contiguous nations. It was a problem for the British to solve between those nations and themselves, and the neutral shipper should not be made to suffer. Many times explanations of detentions were not promptly given causing great irritation on the part of the shippers.

Grey's note was not the official detailed message the Foreign Office counselors were preparing. In this regard, Bryan instructed Page under date of January 12, 1915, to inform the Foreign Secretary that the United States appreciated Britain's agreement respecting international law as set forth in the American note, however, an official reply would be withheld until a further declaration from the British was received.⁶

The very lengthy and detailed answer to detentions and seizures of neutral commerce arrived in February.⁷ Grey endeavored to convincingly

⁵For. Rel., U.S., Lansing Papers, I, 261.

⁶For. Rel., U.S., 1915, Suppl., pp. 305-06.

⁷Ibid., pp. 324-34.

show that British naval operations could in no way be held responsible for any diminution in the volume of United States' exports. He also maintained that statistics revealed a temporary disturbance in neutral shipping had earlier occurred, however, a steady recovery had commenced and was then still in progress. The Foreign Secretary pointed out that detention of ships with a view to stopping contraband traffic had not nearly so reduced shipping tonnage as the destruction of neutral vessels by submarine mines indiscriminately laid by the enemy.⁸ Furthermore, because it was possible for belligerents to easily supply themselves through contiguous neutral countries with modern systems of transportation, it was impossible for a belligerent's opponent to refrain from interfering with commerce intended for the enemy although destined to a neutral port.

In addition, Grey insisted that the distinction between foodstuffs intended for the civil population of Germany and those intended for its armed forces no longer existed.⁹ He hoped it would be seen that Britain in her naval conduct had not reduced neutral commerce, and that it had been the endeavor of Great Britain to avoid personal loss and injury to neutrals as contrasted with the enemy whose policies made no provisions for personal safety.

The reference Grey made concerning personal safety was in regard to the German declaration dated February 4, 1915, establishing a naval

⁸ Ibid.

⁹ For. Rel., U.S., 1915, Suppl., p. 332.

war zone around the British Isles. Gerard, United States Ambassador in Berlin, cabled Bryan advising in part:

German Admiralty issues the following proclamation: The waters surrounding Great Britain and Ireland including the whole English Channel are hereby declared to be comprised within the seat of war and that all enemy merchant vessels found in those waters after the eighteenth instant will be destroyed although it may not always be possible to save crews and passengers.

Neutral vessels expose themselves to danger within this zone of war since in view of the misuse of the neutral flag ordered by the British Government on January thirty-first and of the contingencies of maritime warfare it cannot always be avoided that neutral vessels suffer from attacks intended to strike enemy ships.¹⁰

The United States strongly protested the German announcement and warned of the grave consequences contingent upon such action. It was all very well to interfere with neutral commerce without loss of life to American citizens, but the German declaration threatened loss of both lives and commerce. The German Government was held in strict accountability for its naval operations regarding loss of American lives and property pursuant to non-belligerent's rights upon the high seas.

The problem of neutral flags began immediately. The British argued that for the purposes of escaping capture by an enemy vessel a merchant ship could use another nation's flag. It had been a well established ruse de guerre within certain limitations. The British had no objection to a foreign merchantman using their merchant flag for the purpose of evading capture at sea by a belligerent. Similarly, the converse should be true.¹¹

¹⁰ Ibid., p. 94.

¹¹ For. Rel., U.S., 1915, Suppl., p. 98.

Bryan, however, cabled Page on February 10, 1915, that the position of the United States in the affair was that the occasional use of a neutral's flag to avoid capture under immediate pursuit was quite different from an explicit sanction by a belligerent government for its merchant ships to generally fly a neutral flag in all waters considered to be frequented by enemy warships.¹² Bryan instructed Page to impress upon Gray the problems such a policy would involve and urge his restraint.

Gray cabled Bryan on February 20, 1915, assuring him that the British Government had no intention of adopting a policy permitting general use of neutral flags for merchant ships other than to escape capture as recognized among nations. However, it was the belligerent warship's duty to ascertain definitely the nationality of a ship, and any loss suffered to neutral shipping caused by disregarding that obligation was the responsibility of the enemy vessel and government.

The German Government had announced three days previously, on February 17, 1915, its intention of proceeding upon the earlier promulgated policy of submarine warfare.¹³ This would be done in light of failure to achieve a compromise allowing foodstuffs and raw materials to enter Germany.

The urgency of the situation prompted the officials at the State Department to seek a settlement of triangular differences by proposing a modus vivendi between the two warring powers. Identic notes outlining

¹²For. Rel., U.S., 1915, Suppl., p. 100.

¹³Ibid., p. 112.

the modus were sent to Great Britain and Germany under date of February 20, 1915. The notes contained the following provisions:

(1) That neither will sow any floating mines, whether upon the high seas or in territorial waters; that neither will plant in the high seas anchored mines except within cannon range of harbors for defensive purposes only; and that all mines shall bear the stamp of the government planting them and be so constructed as to become harmless if separated from their moorings;

(2) That neither will use submarines to attack merchant vessels of any nationality except to enforce the right of visit and search;

(3) That each will require their respective merchant vessels not to use neutral flags for the purpose of disguise or ruse de guerre.

Germany to agree:

That all importations of food or foodstuffs from the United States (and from such other neutral countries as may ask for it), into Germany shall be consigned to agencies to be designated by the United States Government; that these American agencies shall have entire charge and control, without interference on the part of the German Government of the receipt and distribution of such importation, and shall distribute them solely to retail dealers bearing licenses from the German Government entitling them to receive and furnish such food and foodstuffs to non-combatants only; that any violation of the retailers' licenses shall work a forfeiture of their rights to receive such food and foodstuffs for this purpose; and that such food and foodstuffs will not be requisitioned by the German Government for any purpose whatsoever, or be diverted to the use of the armed forces of Germany.

Great Britain was to agree:

That food and foodstuffs will not be placed upon the absolute contraband list and that shipments of such commodities will not be interfered with or detained by British authorities if consigned to agencies designated by the United States Government in Germany for the receipt and distribution of such cargoes to licensed German retailers for distribution solely to the non-combatant population.¹⁴

Sir Edward Grey informed Page that he favored the proposals at least in principle. The Foreign Secretary added, however, that the plan

¹⁴ For. Rel., U.S., 1915, Suppl., p. 120.

had to be submitted to the Cabinet and then to France and Russia.¹⁵

Gerard cabled Washington on February 27, 1915, advising Bryan to notify the provision providing that distribution of food be supervised by agents of the United States Government. This would have meant a partial surrender of German sovereignty.¹⁶ The Ambassador suggested that distribution be handled by a neutral committee appointed by him personally. If Germany accepted the proposition and England and her Allies did not, the United States would place an embargo on arms to the Entente Powers.

Germany was the first to answer on March 1, 1915, stating that the proposal generally offered a suitable basis for the practical solution of outstanding problems. The German Government was prepared to forego use of the submarine in attacking merchantmen of any flag except to enforce the right of visit and search. The suggested regulation of the importation of legitimate foodstuffs was also accepted in principle. Germany, however, reserved a definite statement until the British replied.¹⁷

The British Cabinet, with the exception of Grey, felt it more advantageous to retain the economic food blockade of Germany even if it meant continued submarine warfare, and on March 15, 1915, they refused

¹⁵ For. Rel., U.S., 1915, Suppl., p. 122.

¹⁶ Ibid., p. 126.

¹⁷ Ibid., p. 130.

the compromise.¹⁸ Thus the modus vivendi was defeated in a first attempt at gravely needed success.

Two weeks earlier Prime Minister Asquith, in an address before Parliament, had replied to German submarine warfare stating that the Allies would cut off all trade with the Central Powers.¹⁹ The Alliance was not to be strangled by a "network of juridical niceties."²⁰ Wilson announced the next day that the United States would defer a protest note until the British made known what measures they intended to employ to accomplish stoppage of trade.²¹ The President stated that conditions of war had changed but not the rules.

In a telegram dated March 15, and received the following day, the British position was amplified in a full text attached to a new Order in Council. Its effect was the same as the previous speech outlining Allied retaliation for German policies. A blockade of German and neutral ports was asserted in everything but name. The language was such as to refrain from using the word blockade in a strict legal sense. Neither Great Britain alone nor her Allies in concert could in fact accomplish a legal blockade.

¹⁸ Charles Seymour (ed.), The Intimate Papers of Colonel House (New York: Houghton Mifflin, 1926), I, 445. Hereafter cited as Intimate Papers.

¹⁹ Hansard, The Parliamentary Debates, House of Commons, Vol. LXX, 1915 (London: His Majesty's Stationery Office 1915), pp. 598-600.

²⁰ Ibid., p. 600.

²¹ New York Times, March 3, 1915, p. 2.

The Order in Council of March 11 in effect said that the Allies would blockade neutral ports as well as German since legal blockade was impossible.²² The impossibility of blockading Germany within the framework of international law stemmed from a combination of geography and the German Navy. Great Britain admitted that this action was "outside the ordinary naval law which could not have been put into force legally had it not been for the prior infringements of Germany."²³ German policy had been the Allied excuse for such unprecedented action. It cannot be doubted, however, that within the letter of international law the Reprisal Order was illegal.

Officials at the State Department began work on a note to His Majesty's Government concerning American views of the blockade. Lansing, Bryan and Wilson held something of divergent opinions as to how the message should be written. The use of the word "blockade" was advised by Lansing in any answer so the United States could insist upon the rules originally governing blockades.²⁴ Wilson, however, said that Lansing's proposed drafts were convincing but would only lead to a legal debate with Britain of no practical benefit. The President felt the United States was faced with something the English were in fact doing. Bryan, on the other hand, suggested the only difference between the views of Wilson and Lansing was the British failure to use the word "blockade" which, to the Secretary of State, was not important for it was merely a

²²See Appendix Order in Council dated March 11, 1915.

²³Seymour, American Diplomacy, p. 40.

²⁴For. Rel., U.S., Lansing Papers, I, 285.

method of procedure.²⁵ He could not understand the British position regarding the right to stop non-contraband goods when shipped to a neutral port. Unless a blockade could be extended to neutral ports only contraband could be stopped.

Lansing felt the United States should protest its rights from being waived and no acquiescence given to British policy by any failure to discuss the method of enforcing the proposed blockade at that time.²⁶ Under the rules of contraband, non-contraband goods consigned to a neutral port whatever the ultimate destination could not be interfered with pursuant to blockade.

Wilson proposed that the line taken should be:

You call this a blockade and mean to maintain it as such; but it is obvious that it is unprecedented in almost every respect, but chiefly in this, that it is a blockade of neutral as well as belligerent coasts and harbours, which no belligerent can claim as a right. We shall expect therefore that the discretion lodged by the Order in Council in the administrative offices and courts of the crown will be exercised to correct what is irregular in this situation and leave the way open to our legitimate trade. If this is not done we shall have to hold you to a strict accountability for every instance of rights violated and injury done; but we interpret Sir Edward Grey's note to mean that this is exactly what will be done.²⁷

Lansing outlined his proposals as follows:

(1) A declaration of the rights of the United States based on principles of international law--to assure people of the United States and the British Government that we were not indifferent to our rights.

²⁵ Ibid.

²⁶ Ibid., p. 288.

²⁷ Ibid., p. 289..

(2) The political effect of a strong declaration of our rights--a general statement which would amount to practical acceptance of the British asserted right to intercept all commerce from neutrals to Germany passing through neutral ports, would give opponents ammunition in foreign policy field.

(3) If we admit by our wording that the measures of Britain are justified by conditions and give it a degree of legality recovery of claims would be difficult.

(4) We must declare our neutral rights as heretofore recognized so that after the war we can assert that such rights exist and their legality has not been impaired by any justification of the Order in Council.

(5) Assert legal rights so in the future they will be of value to those injured by the Order in Council.

(6) We should avoid asserting our legal rights in such a way as to force our Government to unusual action to compel their recognition.

These views were in the form of a memorandum dated March 24, 1915.²⁸

Four days later Wilson sent a message to Lansing concerning his previous drafts:

I have recast the note as a statement and interpretation so that there is no argument involved, but it is meant to mean: We have the Order and the note accompanying it. We cannot understand these as notice of legal action. We shall assume the contrary until things done compel us to look upon the matter differently. Then we shall hold the British government responsible in accordance with the well known principles of international law, of which we now remind her, so that she may know just what we understand them to be.²⁹

Lansing answered that he would effect the desired changes and the draft was accepted by Wilson on March 29, 1915.

The note sent to Page on March 30, could not be construed as a formal protest. It pointed out that the March Order in Council constituted a practical assertion of limitless belligerent rights in controlling neutral commerce in denial of the sovereign rights of peaceful

²⁸ Ibid., p. 291.

²⁹ Ibid., p. 293.

nations. The United States conceded the right to take vessels into port for visit and search if suspected of carrying contraband cargoes.³⁰ The United States could not accept, however, any blockade within the principles of international law which disallowed legal traffic to and from neutral ports. The British defense that the blockade was a justifiable retaliatory measure for German actions was also unsatisfactory. The United States further expressed hope that the instruction given to authorities by the British Government would be in such a manner as to modify the practical application of the Order in Council which, if strictly enforced, would violate international law.³¹

The United States, instead of immediately assuming a firm, positive position against the blockade, merely asserted her expectation that Great Britain would not violate traditional principles of international law. In the opinion of von Bernstorff, Germany was disappointed that the United States made no attempt to vindicate her rights in such matters, confining herself to demanding compensation for individual infringements of rules relating to neutral commerce.³²

The note, however, was well received in Great Britain by both the press and general public. One British journalist pointed out that prior

³⁰ United States Congress, Senate, 64th Congress, 1st Session, Congressional Record, Vol. LIII, Part 2 (Washington: Government Printing Office, 1916), p. 1188.

³¹ For. Rel., U.S., 1915, Suppl., p. 156.

³² Bernstorff, op. cit., p. 128.

to the American note of December 26, 1914, public opinion in England had been most friendly toward the United States.³³ Upon publication of the "contraband note," however, the average Britisher gathered that American interests were governed by selfish financial desires and the United States would champion the side which offered the greatest material benefits.³⁴ This view persisted because of the continued diplomatic representations by the State Department.

Upon promulgation of the March 30 note the reaction of the British populace was quite different. Page cabled Bryan under date of April 7, 1915, that "practically all newspaper comment on note is friendly and shows appreciation of the American position."³⁵ The Ambassador suggested that at worst it was regarded as a lawyer's brief, but elicited a generally friendly response. He felt that at no other time since the beginning of the War was there a better relationship with England than at the time of this note.

In the United States, when the Order in Council was first published, practically all newspapers demanded some type of protest. Many Congressmen also pressed for claims against England. Few commercial papers, however, were prepared to protest strongly against Allied action. Business interests desired nothing which might endanger trade with the Entente Powers. The wealthy generally did not concern themselves with the Reprisal Order.³⁶

³³For. Rel., U.S., Lansing Papers, I, 291-92.

³⁴Ibid.

³⁵For. Rel., U.S., 1915, Suppl., p. 158.

³⁶May, op. cit., p. 345.

During the spring and summer of 1915, the blockade forced down cotton prices and consequently enraged much of the South. This feeling was lessened to a great extent when a price stabilization agreement was reached between the United States and England.³⁷ There was no question that America was generally pro-Ally even if some sharp factional resentment existed.

It is true, of course, that the blockade was injurious to neutral shipping. Of singular importance, however, was the observation of Kenworthy and Young in pointing out that "one effect of the British blockade was to so irritate Germany into so irritating America that the British could continually screw the vise tighter."³⁸

Although the blockade was clearly at variance with international law, the United States took no formal action against it for six months. The State Department relied upon representations concerning individual cases warning Britain that the United States would protest formally if her actions were not changed. In late October of 1915, the United States did in fact openly declare her opposition to the principles laid down by this exceptional measure.³⁹

In May, 1915, the United States once again experienced another diplomatic defeat in an abortive attempt to negotiate a compromise between the Allies and the Central Powers. Colonel House and Sir Edward Grey

³⁷Ibid., p. 343.

³⁸J. M. Kenworthy and George Young, Freedom of the Seas (New York: Horace Liveright, 1928), p. 73.

³⁹May, op. cit., p. 327.

worked out an agreement advancing three provisions:

- (1) Permit staple foodstuffs to go to neutral ports without question.
- (2) All foodstuffs detained at the time of conversation would be brought before prize court as quickly as possible.
- (3) Claims concerning cotton cargoes then detained were to be made as soon as shippers certify as to each cargo, that they are the real owners to whom payment should be made.

If England agreed to the first provision Germany was to discontinue the use of submarine warfare and asphyxiating gases.⁴⁰

The British Cabinet at the time, however, was in dissolution.

The May crisis was much more acute than had been the one in February.

There was wide spread dissatisfaction with Asquith's Government. Clamor became more intense for the application of even greater pressures upon the Central Powers. A coalition government was formed in which Asquith remained as Prime Minister and Sir Edward Grey as Foreign Secretary, but the Cabinet also included men who did not feel it necessary to retain Anglo-American friendship at any cost. They represented a prevailing attitude which demanded stringent measures whatever the price might be.⁴¹

Colonel House wrote Wilson under date of May 20, 1915, stating:

. . . It is unfortunate that the Cabinet is to be reformed, for I am confident with the present members the plan would go through, provided Germany makes the proposal. The new element to go in is less apt to favor the proposal than those already there.⁴²

The President's advisor was, nevertheless, hopeful for a favorable British reaction.

⁴⁰ Seymour, Intimate Papers, I, 447.

⁴¹ May, op. cit., p. 310.

⁴² Seymour, Intimate Papers, I, 448.

The next day House penned in his diary:

I lunched with Grey and read him the President's dispatch He has seen nearly all the present Ministry and enough of the Opposition who would probably be in the Cabinet, to be able to say that in his opinion, if Germany made the proposal I had suggested it would be considered by his Government.

He is always cautious in his statements, and I conclude that what he says means that the British Government will accept the proposal. It will be a great diplomatic triumph for the President if brought about, and it will settle our contentions with both Governments.⁴³

The German Government, however, put an end to any chance of compromise by brusquely refusing the proposal rendering any projected British action academic. This marked the second failure in three months by the United States to effect a compromise between the warring nations. The submarine remained and foodstuffs continued to be stopped. Charles Seymour summarized the defeat saying:

This ended the most favorable opportunity for settling the controversy that later was to exercise momentous effect upon the course of the war and the fate of Germany. Had Berlin accepted the compromise, not merely would Germany have obtained the food of which, as she complained, her starving civilian population was deprived by an illegal blockade, but she might have avoided the quarrel⁴⁴ with the United States that brought America into the war

House became convinced, if indeed he had not been before, that the United States could not forever remain at peace and he returned from Europe.

Although some members of the new Cabinet did not share his opinion, Sir Edward Grey remained convinced of the paramount importance of the best possible Anglo-American relations. He was prepared to go to nearly

⁴³ Ibid., p. 450.

⁴⁴ Ibid., p. 453.

any lengths to accomplish the preservation of these relations. The Foreign Secretary sought arrangements with American shippers to have their goods pre-inspected and certified by British officials to assure minimum delay. Also, a special committee was set-up in London to expedite the handling of ships not previously searched.⁴⁵ Upon seizure of goods full explanations were made as soon as possible in order to relieve potential injury to American interests. The demands, however, by civilians and the military alike grew more intense for increased economic warfare.

The Spring of 1915 marked a very important change in the British political atmosphere. Sir Edward Grey began to lose his ability to reflect in British policy his astute evaluation of American friendship.⁴⁶ Nevertheless, even as men who did not view American good will as absolutely essential to final victory gained more power in the British Government, Germany's policies were so blundering and misguided that the basis of Anglo-American friendship was probably strengthened. It must be pointed out that during the first six months of the War Grey "had insured that British policy should not destroy Anglo-American good relations."⁴⁷ While it is true that a new set of conditions affecting the relationship between the two governments developed after the spring of 1915, mutual good will was not completely forsaken.

⁴⁵May, op. cit., p. 31.

⁴⁶Ibid., p. 33.

⁴⁷Ibid.

Problems, nevertheless, concerning interference with neutral commerce continued. Lansing sent a message to Bryan under date of May 15, 1915, in which he suggested that another note be sent to Great Britain since she had been guilty of flagrant violations of international law contrary to Sir Edward Grey's assurances of correct treatment of neutral cargoes and vessels.⁴⁸ The Counselor felt "we have already been too complacent with Great Britain in the enforcement of the Order in Council. For two months they have been violating the rights of neutrals."⁴⁹

Lansing then prepared a draft telegram to be sent to Page for presentation to the Foreign Office. It impressed upon the British their impairment of such principles of international law that the United States could no longer remain silent. Before the cable was sent, however, it was learned at the State Department that the British had prepared a reply to the American note of March 30. It was then decided not to dispatch the new telegram allowing the British the opportunity of presenting their note before a fresh American complaint was delivered.⁵⁰

Lansing sent a copy of another proposed telegram to Wilson for approval on June 12, 1915. Two days later the President gave his consent to its contents, but suggested that the cable be held until House could give advisement concerning the matter as he had arrived in New York the day before.⁵¹

⁴⁸ For. Rel., U.S., Lansing Papers, I, 297.

⁴⁹ Ibid.

⁵⁰ Ibid., p. 299.

⁵¹ Ibid., p. 300.

The telegram was never cabled but Page was instructed to hold up the British reply to the note of March 30 if it did not include concessions to the American view. The Ambassador was further informed that Lansing and others at the State Department actually had knowledge as to what the note contained, and its contents would only bring to a climax increasing agitation against British interference with neutral commerce. Advanced information advised it averred a defense of Allied policy in light of German illegalities.⁵² The British Government did not reply to the American contentions until Gray's note of July 23, 1915, was received.

A long memorandum was prepared by the British and dispatched under date of June 22, 1915. It was quite lengthy and dealt with both general and specific restraints upon commerce. Assurances were given that the British Government was to minimize any inconveniences caused neutral shipping. Under section 7 some interesting facts concerning detentions were given:

(7) As regards the more general allegation of delay in dealing with cases of detained cargoes, the following facts and figures may be quoted:

The total number of vessels which, having cleared from the United States ports since the initiation of the retaliatory measures against German trade, are still detained in United Kingdom ports is 27; of this number 8 are discharging cotton Of the remaining 19 vessels, 7 placed in the Prize Court have been discharged. The other 12, of which 3 only are American ships, are detained pending inquiries as to suspicious consignments, and particulars as to the dates and approximate causes of detentions are furnished in the accompanying list: It will be observed that 8 have been detained for a period of less than a week, and 3 for a period of less than a fortnight, while the

⁵²For. Rel., U.S., Lansing Papers, I, 300.

detention of 1 is due to the difficulties in regard to transit across Sweden and Russia.⁵³

An accompanying list was appended as a second enclosure. It revealed that products indispensable for United States industry were extended preferential treatment.

Although the British had seemingly given a documented defense of their policies and practices, they were in fact increasing interference with neutral commerce. Between March 11 and June 15, 1915, two hundred and fifty-seven vessels were detained at Kirkwall alone and the detentions lasted from two or three to thirty days at great injury to the shippers.⁵⁴ A suspicion persisted among certain circles that the British policy was to render unprofitable Scandinavian trade forcing increased trade with the Entente Powers, and, in so doing, augment their merchant fleet which had been seriously reduced by German's submarine warfare.⁵⁵

Examination of vessels was often unnecessarily delayed. The British detained ships without just cause and applied municipal legislation to vessels and cargoes on the ground that being within British territorial waters they were subject to British law, even though they had been placed under British jurisdiction by means at variance with established international law.⁵⁶

⁵³ United States Department of State, European War No. 2, Diplomatic Correspondence with Belligerent Governments Relating to Neutral Rights and Duties (Washington: Government Printing Office, 1915), p. 173. Hereafter cited as E. W. No. 2.

⁵⁴ Lansing, op. cit., p. 124.

⁵⁵ Ibid.

⁵⁶ Ibid., p. 123.

A small controversy arose over the detention of a vessel carrying goods not consigned through the Netherlands Oversea Trust which was a Dutch organization. This body had been created, with British co-operation, as a semi-official agency with extensive powers including supervision of all commodities imported into Holland except wheat, wheat flour, and wheat meal.⁵⁷

The American ship Seguranca, bound from New York to Holland carrying a cargo consigned entirely to named consignees in Holland and accompanied by a certificate from the British Consul General in New York attesting to its contents, was detained by the British. The State Department immediately informed His Majesty's Government that the United States could not admit to their right to require that cargoes be reconsigned to the Netherlands Oversea Trust.⁵⁸

The previous month (March), Grey had advised Page that if shipments were consigned to the Netherlands Oversea Trust all danger of goods reaching the enemy was ended, but if they were not so consigned the probability of them reaching Germany was great. If all consignments of conditional contraband were made to this organization no delay to shippers would be encountered.⁵⁹

Page cabled Bryan the results of consultations at the Foreign Office concerning the Seguranca on April 28, 1915. The British informed him that on April 22, the vessel was allowed to proceed when all the

⁵⁷ Ethel C. Phillips, "American Participation in Belligerent Controls, 1914-1917," American Journal of International Law, 27 (1933), 678.

⁵⁸ E. W. No. 2, p. 117.

⁵⁹ For. Rel. U.S., 1915, Suppl., p. 353.

consignees agreed to receive their goods through the Netherlands Oversea Trust.⁶⁰ The British pointed out that they did not "require" cargoes to be consigned to the agency, but they accepted such consignment as proof that the cargo was intended for bona fide consumption in Holland. The course of action indicated greatly facilitated commerce bound for Dutch ports.

The final note on the subject was exchanged on May 6, 1915. It read in part:

Ambassador Page is also instructed to inform the Foreign Office that the United States Government does not object to the consignment of American shipments to the Netherlands Oversea Trust, provided the plan be voluntarily acquiesced in by the shippers, but that it does object to the holding up by the British Government of non-contraband cargoes until reconsigned to the Netherlands Oversea Trust; that the United States Government finds no legal justification for the detention of non-contraband cargoes and that in the circumstances of this case the burden of proof is not on shipper to establish the non-contraband character, but is on the British Government to show contraband character of shipments.⁶¹

Another interesting case during this period involved the vessel Wico. She was carrying a shipment of oil to Stockholm for the Krooks Petroleum and Oil Company. The British seized the Wico on the ground that they had to have complete assurances that the ship and her cargo would not be captured by Germany.⁶² On March 20, 1915, Page informed Grey that the United States could not admit to their right to detain the vessel under such circumstances. No nation could give assurances that a ship would not be held up by forces of another belligerent government.

⁶⁰ E. N. No. 2, p. 117.

⁶¹ Ibid.

⁶² Ibid., p. 121.

The English replied to the American representation on April 18, 1915. It was decided that in this particular case the ship could proceed to her destination, but His Majesty's Government reserved the right to reconsider the whole question of permitting oil cargoes to proceed to that destination if there occasioned any future German seizures.⁶³ Bryan then instructed Page to inform the British Government that the United States considered any seizures of American cargoes by German naval forces a matter between the Governments of the United States and Germany. The United States could not entertain any action by German authorities which could allow justification for cargo seizures by Great Britain.

In a reply dated May 16, 1915, the British stated that they held no such thoughts as possessing the right to interfere with neutral ships on the ground that the vessels were liable to be captured by belligerent forces. The note read in part:

The right which His Majesty's Government claim, and which they feel confident will not be questioned by the United States Government, is that neutral ships may be held up in cases where there are good grounds to suspect that their ostensible destination is not the genuine destination, and that fraudulent arrangements have been concerted with the enemy cruisers for delivering ship and cargo into their hands.⁶⁴

With this exchange the United States dropped the case.

The British were understandably slow in many instances concerning advisement of ships and cargoes detained. Even Page expressed the opinion that Sir Edward Grey "had not acted with the promptitude promised

⁶³Ibid.

⁶⁴Ibid., p. 122.

in regard to notification of ships and cargoes to the American Embassy."⁶⁵ However, owing to the mass of cases acted upon it was not surprising that Great Britain was sometimes dilatory, or seemingly so, in the promulgation of ship lists.

The question of payment of costs for discharging cargoes at British ports pursuant to visit and search continued to vex neutral shippers. Consul General Skinner in a cable from London under date of May 15, 1915, advised Bryan that the Admiralty marshal had informed that discharging expenses must be borne by the shippers.⁶⁶ This unusual policy was practiced under the Order in Council of March 11, 1915. Skinner promised to advise ships' masters engaged in innocent commerce to refuse to pay the bills, and further felt confident that if refused the Admiralty marshal would pay them. The action by a belligerent in placing the responsibility of paying discharging costs upon a neutral had absolutely no justification in international law. The problem, however, remained to plague the State Department and American shippers.

William Jennings Bryan resigned his post as Secretary of State early in June of 1915. Shortly thereafter Robert Lansing was appointed to fill the position. As Counselor for the State Department he had formulated much of the American defense of neutral rights.

Soon after Lansing's appointment, Skinner dispatched a note concerning the apparent impossibility of achieving a modification or

⁶⁵For. Rel., U.S., 1915, Suppl., p. 390.

⁶⁶Ibid., p. 432.

withdrawal of the March Order in Council.⁶⁷ Although it was clearly at variance with established principles of international law it was serving British military purposes successfully. In part the Consul General added:

If our British friends would only put their administrative machinery in order, and deal with neutral cargoes and ships in a spirit of fairness; and also with some efficiency, they probably could carry out their program, while at the same time reducing complaints to a very low figure⁶⁸

Certainly the British were not modifying or withdrawing any of their practices and policies concerning the economic strangulation of the Central Powers. On the contrary, the Allies increased and strengthened them.

The British persistently expanded the contraband lists until they became almost universal. The United States made representations to His Majesty's Government from time to time, but to no avail. The difficulties between the United States and Great Britain, relative to contraband, was not so much the addition of individual items, as open to debate as they undoubtedly were, but the general British policy in arbitrary treatment and extensions.

In a note to Page under date of January 13, 1915, dealing with the English addition of rosin and turpentine to the contraband lists, Bryan stated that the United States recognized the exercised right of making additions from time to time to the contraband lists, but it could not accept indiscriminate additions without reference to the character of

⁶⁷For. Rel., U.S., 1915, Suppl., p. 466.

⁶⁸Ibid.

the articles. The United States was disposed toward liberal application of existing rules necessitated by modern conditions of war, but it could not agree on all particulars as adopted by Great Britain.⁶⁹ The British, of course, remained unmoved by such opinions.

On May 27, 1915, another decree was promulgated by England with regard to contraband extensions. It included Toluol, lathes and other machine tools capable of manufacturing munitions of war, maps and plans.⁷⁰

Slowly at first, but with constant acceleration the British gained almost complete control over neutral commerce. The United States had rapidly developed the practice of making representations concerning individual cases involving interference with neutral rights, rather than formulating a positive, inclusive position.

One British policy which tended to pacify to some extent enraged American shippers was that of offering something of a solatium for cargoes which might have rightfully gone to another port. Great Britain did compensate for many shippers' claims concerning confiscation and detention. Consequently, the shippers, in their anger, were not as demanding as they sometimes might have been.⁷¹

It was apparent by mid 1915 that the War was going to be a long and costly conflict. Greater pressure was applied to the officials in the British Government to effect any course of action which would insure

⁶⁹For. Rel., U.S., 1915, Suppl., pp. 306-07.

⁷⁰Ibid., p. 165.

⁷¹Albert Bushnell Hart, "Nations' vs. Belligerents' Laws," New York Times Magazine, (March 21, 1915), 4.

the ultimate defeat of Germany. To accomplish this one of the most logical and obvious paths was the continued economic starvation of the Central Powers.

During the six months period the notes between the two English speaking governments purposefully became more numerous and verbose. The extremely important factor gained was time.

CHAPTER III

OLD PROBLEMS AND A SPIRITED REPLY

Public demands in the United States for a redressment of the British practices causing undue interference with neutral shipping grew more numerous during the summer of 1915. A letter to Sir Edward Grey from Colonel House dated July 8, 1915, contained the admonition:

. . . in the event our immediate differences with Germany are composed, there will at once arise a demand for an adjustment of our shipping troubles with England. There is an influential element here that persists in pressing this issue to a conclusion, and it is something of which the President must take cognizance.

Is there not a way by which some of the responsibility England bears may be transferred to France? You will remember the Dacia incident was immediately forgotten when France seized her.¹

Demands for "an adjustment" of neutral commerce problems with Great Britain were continually met within the boundaries of the earlier position taken by the United States. Legal arguments and insistence upon customary interpretation of law persisted.

Ambassador Page was instructed by cable under date of July 14, 1915, to inform His Majesty's Government that as regards Orders in Council the United States insisted upon rights established by international law.² The note stated that in view of the differences which existed between the two governments relating to principles of law applicable in Prize Court proceedings, in cases involving American interests, the

¹Seymour, Intimate Papers, II, 52.

²For. Rel., U.S., 1915, Suppl., p. 472.

United States would not accept any limitation of established principles of international law by Orders in Council or other municipal legislation. Furthermore, the United States could not recognize the validity of such proceedings in deprivation of American rights under international law.³

Lansing sent a message to Page two days later, informing him of a cable from Spring-Rice to Sir Edward Grey urging the Foreign Secretary to more considerate treatment of American commerce, particularly cotton, oil, and meat products.⁴ The Secretary of State stressed the importance of the understanding by the British Government that the seizing of neutral cargoes on mere presumption of enemy destination and the general restraint of American trade with neutrals was unjustified in international law. Finally, the instruction pointed out that the situation in the United States, according to Lansing, was becoming critical.⁵

Page cabled Lansing on July 22, 1915, advising him that Grey suggested no court had yet passed on the validity of the Order in Council of March 11, 1915, but would probably do so in the Neeches Case.⁶ It is appropriate here to examine the problem.

The British had seized a vessel with American-owned goods passing from a neutral port in the Netherlands, Rotterdam, to a neutral port in the United States on the ground that the goods had originated in part in

³For. Rel., U.S., 1915, Suppl., p. 472.

⁴Ibid., p. 473.

⁵Ibid., p. 474.

⁶For. Rel., U.S., 1915, Suppl., p. 484.

Belguim, therefore from territory in possession of the enemy.⁷ The action taken by the British was pursuant to paragraph 4 of the March 11 Order which stipulated that "every merchant vessel sailing from a port other than a German port, carrying goods of enemy origin, may be required to discharge such goods in a British or Allied port."⁸

The United States held the provision invalid within the framework of international law. An Order in Council could not permit the seizure of American-owned goods from neutral port merely because the goods originally came from territory in possession of the enemy. It obviously violated the right of neutrals to trade with each other except in contraband or in contravention of a legal blockade of an enemy seaport. The United States earnestly requested the goods released and forwarded to the original destination. In a note dated July 31, 1915, the British Foreign Secretary reported the willingness of his Government to consider the claims of the neutrals concerned.⁹

Sir Cecil Spring-Rice advised Lansing on August 6, that his Government could not admit to any illegal procedure in this case.¹⁰ His Majesty's Government would not consent to presume that any of its own legislation was invalid nor admit any limitation upon the legal rights of visit and search, detention, and condemnation which it claimed. Contraband

⁷E. W. No. 2, p. 177.

⁸Ibid.

⁹For. Rel., U.S., 1915, Suppl., p. 495.

¹⁰Ibid., p. 501.

was held to be subject to the rules of continuous voyage and the principles suggested by the United States could not be accepted.

The vessel was detained approximately one month then allowed to proceed. During this it was involved in litigation and, interestingly enough, sustained damages amounting to nearly one thousand five hundred pounds from a collision with another vessel while under control of the British Admiralty.¹¹

Lansing informed Page in a communique dated July 26, 1915, that although Britain had given assurances of facility in handling cases involving detentions, in practice this had not been done.¹² Over three thousand American importers had protested to the State Department and were influencing public opinion.

Sir Edward Grey, on July 23, 1915, answered the American note of April 2. It confirmed the British intention of prohibiting trade with Germany and Austria-Hungary including traffic through contiguous neutral ports.¹³ The reply further stated that the United States had recognized the right of a belligerent to blockade enemy ports, but added, that this right would be useless if the belligerent were not permitted to sever all the sea-borne trade of its adversary. Thus, the British Government could not accept the American contention that a belligerent could not stop or interfere with commerce going to adjacent ports of an enemy, if that commerce could in turn pass through those channels for purposes of supplying

¹¹Ibid., p. 514.

¹²Ibid., pp. 227-28.

¹³For. Rel., U.S., 1915. Suppl., pp. 169-73.

its war machine. His Majesty's Government was unable to admit that a belligerent violated any fundamental precept of international law by applying a blockade in such a way as to cut off the enemy's commerce with foreign countries through neutral ports if the circumstances rendered such application of the principles of blockade the only means of making it effective.¹⁴

In essence the only question to the English was whether their policy or action conformed to the spirit of the rules of war. The British insisted that there was no interference with any trade which they would not be entitled to interfere with (by blockade), "if the geographical position and conditions of Germany at present were such that her commerce passed through her own ports."¹⁵

Grey pointed out the manner in which the United States developed principles of contraband and blockade during the Civil War--goods destined for enemy territory were intercepted before they reached neutral ports from which they were to be re-exported.¹⁶ The Doctrine of Continuous Voyage in the American experience was seen to have applied equally to blockade and contraband. It appeared to the British Government that it was natural to extend the blockade to neutral ports if it were to be effective, and this was in accordance with established principles of international law. The Springbok Case was cited.

¹⁴ E. W. No. 2. p. 179.

¹⁵ Ibid., p. 180.

¹⁶ For. Rel., U.S., 1915, Suppl., p. 170.

In reply to the charge by the United States that the blockade was unique and unprecedented, the British maintained that this could not be held for if they were successful in their efforts to distinguish between the commerce of neutral and enemy countries, there would not be substantial interference with trade to neutral ports except when they constituted ports of access to and exit from the enemy territory.¹⁷ There were numerous ports which could not be regarded as offering facilities for neutral commerce only, and the sole British purpose was to restrict the trade through such ports which had an ultimate enemy destination.

The note also pointed out the British had not applied the old rule respecting blockade which stated that ships and goods on their way to or from the blockaded area were liable to condemnation. They had so changed the rule so as to avoid confiscation. Facts were also included purporting to show that the increased opportunities for American companies created by the War had more than compensated for the losses of German and Austrian markets. Consul General Skinner, however, said the figures did not bear this out because the enormously increased amounts taken by the Allies were not equivalent to their usual imports plus the normal demand by Germany.¹⁸

In closing, the message insisted that many questions regarding the exact method of effecting a blockade were unsettled. However, the basic principle universally recognized was that belligerents were

¹⁷ E. W. No. 2, p. 180.

¹⁸ Herrisey, op. cit., p. 89.

entitled to sever, by effective means, the sea-borne commerce of its enemy. This was true of both blockade and contraband.

Another British note was presented at the State Department under date of July 31, 1915, concerning Prize Courts and their application of the laws to be administered.¹⁹ Sir Edward Grey cited American precedents and was of the opinion that revealed the principle of law between the two governments was the same. Also mentioned was the attitudes of British judges in Prize Courts concerning the two sources of law--municipal legislation of its Sovereign and principles of international law. Years before Lord Stowell, in the Fox Case, had said in part:

These two propositions, that the court is bound to administer the law of nations, and that it is bound to enforce the King's orders in council, are not at all inconsistent with each other, because these orders and instructions are presumed to conform themselves, under the given circumstances, to the principles of its unwritten law. They are either directory applications of these principles to cases indicated in them, cases which, with all the facts and circumstances belonging to them, and which constitute their legal character, could be but imperfectly known to the court itself; or they are positive regulations, consistent with these principles, applying to matters which require more exact and definite rules than these general principles are capable of furnishing These courts have their unwritten law, the approved principles of natural reason and justice; they have likewise the written or statute law in acts of Parliament, which are the directory application of the same principles to particular subjects, or positive regulations consistent with them, upon matters which would remain too much at large if they were left to the imperfect information which the courts could extract from mere general speculations. What could be the duty of the individuals who preside in these courts, if required to enforce an act of Parliament which I presume they would not entertain a priori the supposition that any such will arise. In like manner this court will not let itself loose into speculation as to what would be its duty under such an emergency: because it cannot without extreme indecency, presume that any such

¹⁹ For. Rel. U.S., 1915, Suppl., pp. 496-98.

emergency will happen. And it is the less disposed to entertain then because its own observation and experience attest the general conformity of such orders and instructions to its principles of unwritten law.²⁰

Gray held, furthermore, that both the United States and Great Britain had adopted the principle that the decision of a National Prize Court may be open to review. If the orders and instructions issued by His Majesty's Government, in matters relating to prize, were not held by the United States to be in harmony with the accepted principles of international law then the British Government was prepared to act in concert with the United States Government in resolving differences over such matters.

The British Foreign Secretary was faced with many complex problems in addition to the law administered by Prize Courts. The demand to place cotton on the contraband list had reached decisive proportions within both public and governmental circles. The British believed such a step to be an absolute necessity, and by the late summer of 1915, they were prepared to take it.

Wilson informed Lansing on July 27 that he entertained deep concern over the treatment accorded cotton by the British for they had given assurances that cotton would never be regarded as contraband. Gray had said: "It is [cotton] therefore as far as we are concerned in the free list and will remain there."²¹

²⁰ For. Rel., U.S., 1915, Suppl., pp. 496-98.

²¹ For. Rel., U.S., Lansing Papers, I, 301.

Lansing advised Spring-Rice that by placing cotton on the contraband list they would in effect admit their alleged blockade was a failure for if it were effective, and their theory of blockade correct, there would be no need to so declare cotton--for all articles, whatever their type and kind, would be barred from entering or leaving Germany if a blockade in fact existed. In addition, Lansing pointed out that if cotton were immediately made contraband the United States would have to assume that the blockade theory as far as neutral ports were concerned, had been abandoned and would proceed under that assumption.²² Lansing also greatly feared that strong resentment in the United States was certain if cotton was so declared. This, however, was a belated conversation between the Secretary of State and the British Ambassador while preparation continued to place the commodity on the list.

The proclamation adding cotton to the absolute contraband list was officially received on August 24, 1915.²³ It included raw cotton, cotton linters, cotton waste, and cotton yarns.

During the spring and summer, the blockade, and increased interference with trade by the British, had greatly depressed the price of cotton which understandably enraged the Southern states. The announcement concerning cotton, however, was followed by negotiations leading to a purchasing agreement which stabilized the price, and with this arrangement much of the American distress and bitterness disappeared.²⁴

²²Ibid., p. 303.

²³For. Rel., U.S., 1915, Suppl., p. 174.

²⁴May, op. cit., pp. 343-44.

Spring-Rice wrote Grey on August 20, 1915: "We differ from the United States, not as to the law, but as to whether the altered circumstances do or do not justify a change in the law."²⁵ Spring-Rice did not desire to see any advantage the British had gained destroyed for some temporary victory.

In the autumn and early winter of 1915, it seemed that a German victory was certain. The Russians suffered disastrous defeats leading to the loss of Serbia and to Bulgaria's entrance into the War on the side of the Central Powers. The successes of the British and French were at best small and horrendously costly. Under such circumstances Great Britain was prepared to go to any lengths to prevent a final German conquest.

According to House, the United States at the time was "in a labyrinth between risking a German victory and constant bickering with Great Britain."²⁶ This was in keeping, of course, with the policies of the officials at both the Foreign Office and the State Department. The longer and more verbose the correspondence the better. Short notes create short tempers and lead to warlike eruptions.

In September an old problem reappeared. It dealt with the British practice of forcing the shippers to absorb the costs of discharging in search and seizure proceedings. Lansing cabled Skinner on September 2, 1915, it read:

²⁵ Gwynn, op. cit., II, 284.

²⁶ Seymour, Intimate Papers, II, 80.

Are you aware of any instance in which charges for unloading in connection with seizure shipments have been imposed on neutral vessels? Department understands port charges are imposed on vessels in such cases. Please telegraph.²⁷

Skinner replied under date of September 3:

Admiralty marshal's rule is:

On arrival any vessel with contraband or seized under order March 11 master required to discharge innocent cargo as necessary expenses warehousing and reshipment of innocent cargo as well as all dues must be paid by ship. Payment may be made under protest. Should master refuse to discharge collector should make arrangements to discharge it.²⁸

Besides costs of discharging, ships had to also pay local wharf dues, pilotage and other charges incurred in ordinary trade. However, if a ship were merely arrested no charges were imposed, but when required to unload her cargo charges were administered. All neutral vessels released were subject to large storage expenses.

An example of such charges was given in the case of the ship Antilla. The vessel was detained from February 24 to April 27, 1915, and paid twenty-five pounds for boiler water, Dundee tonnage rates, and shore dues; one hundred and sixty-one pounds for pilotage, reloading cargo, one hundred and six pounds; and finally, twenty-seven pounds for light house dues.²⁹ Skinner suggested a protest be made concerning warehouse charges and other various expenses when innocent goods were involved, but for the instant the matter there remained.³⁰

²⁷ For. Rel. U.S., 1915, Suppl., p. 531.

²⁸ Ibid., p. 532.

²⁹ For. Rel. U.S., 1915, Suppl., p. 532.

³⁰ Ibid., p. 544.

Lansing, on October 8, 1915, requested Skinner to investigate reports that in cases of seizure since the blockade Order in Council Prize Court proceedings were based upon both the violation of blockade and suspected contraband character of the goods. These grounds were stated in the same writ.³¹ Skinner replied three days later, advising Lansing that a same writ called an "omnibus writ" was frequently used to cover seizures for both cases--the prosecutor then proceeded under the heading best adapted as the particular case developed.³² It was a rather convenient system for British jurists.

Contraband lists were again extended by His Majesty's Government by a proclamation dated October 14.³³ The lists were quite lengthy, but continued schedules for absolute and conditional contraband. In theory there was a distinction but in practice any real difference had long since ceased to exist.

After a period of fifteen months, characterized by failure and vacillation, the United States finally took a positive, forward position. In a classic note under date of October 21, 1915, the State Department challenged the British interpretation of blockade and general policies of interference with neutral rights and commerce.³⁴ It was unquestionably the best written, most well conceived protest to that date. The note replied to, and refuted individually, every contention the British held.

³¹Ibid., p. 564.

³²For. Rel., U.S., 1915, Suppl., p. 566.

³³Ibid., p. 175.

³⁴Ibid., pp. 578-601.

Lansing pointed out that seizures had not been uniformly based upon proof obtained at the time of capture, but that vessels were detained while search was made for contraband or conclusive evidence of intention to evade the non-intercourse measures of Great Britain. Search at sea had not been contemplated from 1888 to the outbreak of the War. The British claim, furthermore, that search in part was in keeping with the practice of the United States during the Civil War was based upon a misconception. The contention that greatly increased exports to adjacent neutrals carried presumption of ultimate enemy destination which justified detention and search was rejected.³⁵

Regarding the blockade, Lansing felt that the United States had erred in understanding the intention of the British Government. Thus, America now challenged the legality of it. The United States alluded to definite points comprising legal blockade: (1) International law declared that a blockade to be legal must be effective but in this case it was not for German naval forces cruised areas of the North and Baltic Seas, seized neutral ships and brought the goods into German ports. The placing of cotton on the contraband list was also tantamount to admitting to the failure of the blockade. (2) The blockade was not impartial in its application to vessels of all nations. German ports were notoriously open to traffic with the ports of Denmark, Norway and Sweden. It was also fact that Great Britain exported large quantities of merchandise to ports blockaded to American commerce. (3) The measure blockaded

³⁵For. Rel., U.S., 1915, Suppl., pp. 581-82.

neutral ports in strict violation of both international law and the Declaration of London, which with respect to blockade, the British Government had adopted by its Order in Council of October 29, 1914.³⁶ Neither limitation as to the blockaded area nor any prescribed penalty for breach of blockade had been given. In view of all these representations, the United States was forced to consider the blockade illegal.

Turning to the question of continuous voyage and contraband, Lansing held that the British analogy to the Springbok Case during the Civil War, relating to seizure of contraband goods going to a neutral port although actually bound for a blockaded port of the South, was in error for the circumstances surrounding the case were essentially different from those to which the British sought to apply the rule. The Springbok Case involved an all sea voyage terminating in an attempt to pass legally blockading squadrons. No neutral ports, however, were closed, but a continuous voyage through a neutral port necessitated such action.³⁷

International law, the note continued, controlled the belligerent's right of seizure and detention of vessels not municipal enactments which seemed to confer such rights and authority for establishing legality in the seizure of neutral vessels. These detentions also produced an adverse effect upon neutral commerce.

Lansing, furthermore, protested against the costs and expenses incurred by neutral vessels brought into port for visit and search. The

³⁶For. Rel., U.S., 1915, Suppl., pp. 583-84.

³⁷Ibid., p. 585.

State Department had been advised that the release of ships held was contingent upon the payment of expenses by the neutral parties.³⁸

As regards contraband extension the United States would not waive her right to object to the propriety and prerogative of His Majesty's Government to include certain articles in the contraband list which had been so included. The relationship between the two governments had to be based upon established principles of international law and not upon expediency.³⁹

It was indeed a brilliant defense of neutral rights, but unfortunately the note came too late to have great practical value. It did, however, assert a positive position of offense for the championing of neutral rights while, at the same time, not seriously endangering peaceful Anglo-American relations.

The strong line taken by the United States produced intense anti-American feeling in England. The British public voiced great resentment. Colonel House reported a typical anecdote illustrating the unfriendly feeling toward the United States involving a Londoner speaking to an American salesman in which the Englishman proclaims:

I don't wish to be offensive to you, but I have only one way to show my feeling of indignation towards the United States, and that is, to have nothing more to do with Americans.⁴⁰

But for all the clamor, resentment, and demands, only long juridical notes were fired across the Atlantic.

³⁸For. Rel., U.S., 1915, Suppl., p. 588.

³⁹Ibid., p. 589.

⁴⁰Seymour, Intimate Papers, II, 75.

Grey informed House on November 11, 1915, that the October note had been sent to his legal advisers for reply.⁴¹ However, the answer was not forthcoming until April 24, 1916. To the Foreign Secretary any admission to the complete body of contentions held by the United States concerning British practices would have ended any Allied hope for final victory in the War.

Many in the United States welcomed the October note for if not overly demanding, it was at least, a masterful exposition of American complaints. Senator Walsh of Montana reflected the thoughts of a number of his colleagues when he said in part:

For myself, I am convinced that we should not have adjourned last spring before authorizing the President to interdict commercial relations with any of the warring nations whenever, in his judgment, it became impossible to secure, through the diplomatic channels, recognition of and respect for our right to trade with foreign countries pursuant to and in accordance with accepted principles of international law.⁴²

The United States, however, was still basically pro-Ally in sympathy. The commercial losses would have been much too costly a price to pay for any protest of a severely demanding nature. Although British interference with neutral shipping was indeed irritating, trade with Allies was also highly profitable. The business interests were well aware of this fact. The influential statesmen of both the United States and Great Britain were determined to maintain a peaceful relationship in

⁴¹ Ibid., p. 80.

⁴² United States Congress, Senate, 64th Congress, 1st Session, Congressional Record, Vol. LIII, Part 2 (Washington: Government Printing Office, 1916), p. 1678.

spite of public vociferations.⁴³ Lansing wrote House that "in no event should we take a course that would seriously endanger our friendly relations with Great Britain, France, or Russia, for as you say, our friendship with Germany is a matter of the past."⁴⁴

On December 9, 1915, Spring-Rice gave Lansing a memorandum which advised that Sir Edward Grey was ready to form a small unofficial committee to consist of persons with experience to examine specific cases where an allegation was made of unnecessary delay in dealing with detained ships and cargoes. The committee would also suggest any improvements in the machinery looking to the prevention of similar delays in future cases.⁴⁵

Lansing, in a circular telegram under date of December 22, 1915, advised American ambassadors in the capitals of the belligerent nations that Colonel House was sailing on the 28th for the purpose of instructing the representatives in the position of the United States regarding international questions and to study the attitudes of the other countries. The last sentence of the dispatch read: "Please impress on Foreign Office that Colonel House is not on a peace mission."⁴⁶

Parliament passed legislation entitled Trading With the Enemy (Extension of Powers) Act on December 23, 1915. Resultant correspondence between the United States and Great Britain, however, did not occur until

⁴³Seymour, Intimate Papers, II, 69.

⁴⁴Ibid., p. 70.

⁴⁵For. Rel., U.S., 1915, Suppl., p. 625.

⁴⁶Ibid., p. 68.

January of the following year (1916). Page informed Grey that the apparent object of the Act was to prevent those persons doing business in the United Kingdom from trading with the enemies of Great Britain.⁴⁷

The United States feared the possibilities of further interference with neutral trade. It appeared that the right of persons domiciled in the United States, whether American citizens or subjects of the countries at war with England, to engage in trade with belligerent countries had been overlooked, and that the exercise of their right could be subject of denial or abridgement in the enforcement of the Act.⁴⁸

Grey replied that the Act was merely an attempt to bring trading regulations into greater harmony with those of France by applying, in some degree, the test of nationality for determining enemy character in addition to that of domicile.⁴⁹ The latter alone was not sufficient in modern conditions of war. He further pointed out that any definition which would confer enemy status upon all persons on enemy nationality or association was specifically avoided. The Foreign Secretary insisted that it was a piece of domestic legislation in the national interest. In summation Grey advised:

. . . His Majesty's Government readily admit the right of persons of any nationality resident in the United States to engage in legitimate commercial transaction with any other persons.

⁴⁷ Miscellaneous No. 11 (1916), Correspondence with the United States Ambassador Respecting "Trading with the Enemy (Extension of Powers) Act, 1915," Cd. 8225 (London: His Majesty's Stationery Office, 1916), No. 1.

⁴⁸ Ibid.

⁴⁹ Ibid., No. 2.

They cannot admit, however, that this right can in any way limit the right of other Governments to restrict the commercial activities of their nationals in any manner which may seem desirable to them by the imposition of prohibitions and penalties which are operative solely upon persons under their jurisdiction.⁵⁰

As the first fifteen months of the War ended the controversies between the United States and Great Britain not only remained, but in some areas were intensified. The British enjoyed a unique control over the commerce of the United States.

American private firms had entered, to some degree, into negotiations for the establishment of belligerent commercial controls. One such example was the American Textile Alliance which entered into an agreement with the British Board of Trade dealing with the exportation of wool for American mills.⁵¹ It was denounced by some as British control over the trade, but the English replied that its sole purpose was the prevention of injury contingent upon total prohibition of wool exportation.

Perhaps the most important foodstuff to the belligerents was wheat. During the total period of American neutrality there existed no official trade organization in the United States in the wheat industry. Until November, 1916, each company dealt individually with the Allies. After that date dealings transpired through the Wheat Export Company, an organization founded by the Entente Powers to purchase wheat for their governments.⁵² The Allies held a virtual monopoly over this trade which

⁵⁰ Ibid.

⁵¹ Phillips, op. cit., pp. 679-86.

⁵² Ibid.

practically severed Germany from all importations of the grain.

Eventually agreements in commodity control reached into a variety of areas. By May, 1917, agreements existed in textiles, grain, copper, rubber, tin, leather, antimony, asbestos, mica, and an assortment of metals.⁵³ It was true, however, that the United States and Norway were the only neutral countries where no general trading associations or government bureaus existed. An interesting facet of the American system of control is the fact that control agreements were undertaken on private initiative and were entirely dependent upon the cooperation of private individuals.⁵⁴

The British also engaged in the practice of blacklisting certain firms. This was a list of companies or persons in a neutral country with which a belligerent power forbade its nationals to trade. The United States was among the last of the neutrals to be so included.⁵⁵ Actually it was not until July 18, 1916, that Great Britain officially announced a blacklist for the United States.⁵⁶ Before the list became official and made public it had been a confidential one. Although the period is without the time interval with which this thesis is concerned, suffice it to say that upon publication, the list so aroused public resentment in the United States that Wilson said his patience was nearly exhausted and

⁵³Ibid., p. 692.

⁵⁴Ibid.

⁵⁵Thomas A. Bailey, "The United States and the Blacklist During the World War," Journal of Modern History, VI (March-December, 1934), 20.

⁵⁶Ibid., p. 15.

that the blacklist was the last straw. He was prepared for the first time to request Congress for power to restrict loans and exportations to the Allies.⁵⁷

By the end of 1915, Sir Edward Grey's influence had diminished appreciably. The Cabinet was constantly swayed by the caprices of public opinion. The tide of war had not yet turned in favor of the Allies and pressures for new and decisive measures were constantly felt.

If controversies were to continue then so must notes. The notes had to be kept long in both numbers and words lest an eruption should occur. The United States had early in the War formulated the policy of making representations concerning individual cases involving interference with neutral rights. But for all the attention paid to reliance upon established principles of international law, it is interesting to note that on May 19, 1927, Secretary of State Kellogg deliberately gave up attempts to ascertain the validity of the claims by the United States regarding violations of neutral rights by Great Britain during the entire period of American neutrality.⁵⁸

Every high official of both governments realized the importance of the United States remaining neutral. Under the circumstances everything was done to preserve neutrality. Juridical separation was far better than armed divorce. Aiding to an almost incalculable degree, of course, Germany with her alienating policies and practices.

⁵⁷ Ibid., p. 23.

⁵⁸ Charles Warren, "Troubles of a Neutral," Foreign Affairs Quarterly, XII (October, 1933-July, 1934), 387.

Also important as a factor to the preservation of Anglo-American friendship, in addition to sentimental sympathies, was the commercial interests. While it was true that the extent of interference with neutral commerce by the Allies was appalling, trade with the Entente Powers was quite profitable. In the opinion of most shippers it was still better to enjoy this profit than to have none at all.

By the beginning of 1916, many high officials in the United States considered German friendship a thing of the past. German diplomacy had become suspect and could not be trusted.

The United States Government had entered into negotiations with both the Entente and Central Powers in abortive attempts to achieve a settlement of existing disputes. Colonel House particularly, as a representative of the President, had personally endeavored to solve everything from effecting the end of the War to compromising problems of international law. But as Walter Lippman observed:

. . . He went to England, Germany and France several times and he had interviews with the leading statesmen. But when it is all said and done, it was the British alone, and then only with a certain section of the British, and with this section not in full confidence, that he had continuous discussion.⁵⁹

Secretary of State Lansing, upon whose shoulders rested the responsibility for judicial arguments and prolongation of discussion, in many ways accomplished a remarkable job. Although neither he nor anyone else obtained an important concession regarding apparent violations of the general principles of international law in question, he did achieve "continuous discussion" which he so fervently desired. Indeed, the

⁵⁹ Walter Lippmann, "The Intimate Papers of Colonel House," Foreign Affairs Quarterly, IV (October 1925-July, 1926), 387.

United States was not able to reach a final settlement of the outstanding problems with Great Britain, but with her designed diplomacy it was a far more important contribution that America and England had avoided a complete break. Although the crisis between the United States and Great Britain was not yet reached, the reliance upon legal argumentation and technicalities had set the pattern for continued peaceful Anglo-American relations.

CHAPTER IV

BRITISH POLICIES AND INTERNATIONAL LAW

The British system for the economic strangulation of the Central Powers during World War I produced many problems relating to the application and extension of accepted principles of international law. Great Britain attached old principles to modern conditions of war, justifying her action on the ground that the conduct of war had so changed as to necessitate new interpretations of existing rules whether by custom or convention.

In international law, according to Oppenheim a leading jurist of the period, a neutral was not obliged to prevent his merchantmen from carrying contraband nor was he obliged to prevent them from rendering services to belligerents within certain limitations.¹ Individuals engaged in such activities did so at their own risk, however, a neutral state was in no way responsible for the actions of its citizens.² Oppenheim described the duties of the belligerent-neutral relationship and vice-versa saying in part:

Duties of neutrals are, firstly, to act toward belligerents in accordance with their attitude of impartiality; and secondly, to acquiesce in the exercise of either belligerent's right to punish neutral merchantmen for breach of blockade, carriage of contraband, and rendering unneutral service to the enemy, and, accordingly to visit, search, and eventually capture them.

¹ L. Oppenheim, International Law (second edition; London: Longmans, Green and Company, 1912), II, 434.

² Ibid.

The duties of either belligerent are, firstly, to act towards neutrals in accordance with their attitude of impartiality; and, secondly, not to suppress their intercourse, and in especial their commerce with the enemy.³

A majority of theoretical writers supported the doctrine that a neutral country was not responsible for the carriage of contraband by its subjects, and a belligerent could not complain of the sale of contraband articles to the enemy on neutral territory.⁴ A great difference of opinion had always existed concerning the relationship of neutral merchants and belligerents. It was held by some that international law was one exclusively between states, and a belligerent state and a neutral individual were not bound by any obligation to each other.⁵ The carriage of contraband was, then, merely a commercial adventure.

H. R. Pyke, an English authority on international law during this time, held that there was really a direct relationship between a belligerent state and neutral individuals, and the actual act of transporting contraband in spite of the prohibition by a belligerent nation, which was in a position to confiscate said cargoes, was a direct violation of international law.⁶ This view was supported by earlier jurists.

Westlake, another renown legal scholar of the period, said:

A positive rule of international law may treat certain conduct of an individual as unneutral, allowing the injured belligerent to repress it by action on the individual wherever such

³Ibid., pp. 378-79.

⁴H. Reasen Pyke, The Law of Contraband of War (Oxford: Clarendon Press, 1915), p. 89.

⁵Ibid.

⁶Ibid., p. 92.

action is possible without violating neutral territory, and precluding his neutral state from defending him against such repression, while that state is not called on to join in the repression. It remains true that international law is the law of states, but there is no solid reason why states should not agree by such law that the responsibility for certain acts and their repression shall rest with the individual and the state directly concerned.

This relationship had been established by international law and usage. The Second Hague Convention had treated the law of neutrality, in some cases, as involving a direct relationship between the belligerent states and neutral individuals.⁸

However, as has been pointed out previously, it was generally held within the framework of international law that a nation was in no way responsible for its citizens engaging in contraband trade, but that they did so at their own risk.

Great Britain began the practice of extending the contraband lists very early in the War and the legal treatment of contraband underwent some remarkable changes.

Contraband may be defined as:

The designation of property, by whomever owned on board a neutral vessel, or owned by a neutral on board an enemy vessel, found by a belligerent on the high seas or within his own or his enemy's territorial waters, on its way to assist his enemy in the conduct of hostilities against him.⁹

Contraband is divided into three classes: (1) Absolute Contraband, those goods which are intended for use in war by an enemy government or

⁷ Ibid., p. 94.

⁸ Ibid., p. 95.

⁹ Ibid., p. 6.

its armed forces. (2) Conditional Contraband, those goods which are not necessarily intended for war purposes and can become absolute contraband only when proved that they are so intended. (3) Non-Contraband, those goods which are intended for use in war and thus are placed on the free list.

It is interesting to note that the first official use of the word, with its meaning in relation to the conduct of war, was in the treaty of Southampton in 1625.¹⁰ The earliest document where the word actually appears is in an Italian charter in 1445.¹¹

The British practice, with regard to contraband of war, had always been defined by reference to general principles of international law, as interpreted by the decisions of British Prize Courts, relative to the provisions of the various proclamations and Orders in Council issued on the occasion of the particular war.¹² The exigencies of the Great War compelled the English to implement and exercise practices without precedent in accepted rules of international law. As stated earlier, immediately after the outbreak of hostilities Great Britain began to extend and enlarge the contraband lists. The first list was identical with that of the Declaration of London with the exception of aircraft which were transferred to the absolute list. The Declaration had designated the

¹⁰ Ibid., p. 11.

¹¹ Ibid.

¹² Ibid., p. 14.

machines as conditional contraband.¹³ Sometimes there was an intermediate step and articles were appended to the absolute contraband category directly from the free list.

In every instance, until 1916, His Majesty's Government made distinction between absolute and conditional contraband. James Garner, author of works on international law and political science, said in part:

It will be noted that in all cases in these proclamations the distinction between absolute and conditional contraband was maintained, but so many articles were put on the list of absolute contraband when tested by former principles of classification, that the attempt to preserve the distinction became absurd, and accordingly, by a proclamation of April 19, 1916, the British government adopted the more logical course of formally abandoning the distinction. A single list of items arranged alphabetically, without distinction as to whether they were absolute or conditional contraband was accordingly issued.¹⁴

This was a departure from the previous policies of England. As Garner pointed out: "The distinction between absolute and conditional contraband is as old as Grotius, and as a principle of international law it had never been contested by the United States or Great Britain."¹⁵ In 1916, England formally abandoned the distinction, but in practice she had done so much earlier.

Another British departure from established principles of international law was the extension of the rule of continuous voyage to the carriage of conditional contraband. The Order in Council of October 29,

¹³James Wilford Garner, International Law and the World War (London: Longmans, Green and Company, 1920), II, 286.

¹⁴Ibid., p. 287.

¹⁵Ibid., p. 289.

1914, permitted application of the rule to conditional contraband bound for neutral ports, and furthermore, it reversed the established custom which placed upon the captor, not upon the owner, the burden of proving a hostile destination.¹⁶ The Declaration of London sanctioned application of the rule of continuous voyage to conditional contraband only if the enemy had no seaports. Both Germany and Austria, however, had seaports, thus the rule of continuous voyage as regards conditional contraband could not have been legally applied to neutral cargoes had the Declaration of London been observed. While it is true that this British policy was a modification of the Declaration, as she had observed, it was generally accepted by all Maritime States when the War broke, that the rule governing continuous voyage should be held as provided by the¹⁷ London Instrument.

The Doctrine of Continuous Voyage had been developed, as a legitimate part of international law, to permit belligerents to effectively meet the problem created by the proximity of neutral ports to enemy territory as regards the ultimate destination of contraband consigned to neutral ports. The ultimate destination, of course, may well have been to the enemy. Respective to the Doctrine of Continuous Voyage Oppenheim wrote:

It also happens in war that neutral vessels carry to neutral ports such articles as are contraband if bound for a hostile destination, the vessel being cognisant or not of the fact that

¹⁶ Ibid., p. 296.

¹⁷ Ibid., p. 299.

arrangements have been made for the articles to be afterwards brought by land or sea into the hands of the enemy.¹⁸

Vessels could carry contraband whether going to a neutral or not if the goods were ultimately destined for the enemy.

The first application of the doctrine to the carriage of contraband appears to have been by French Courts during the Crimean War. It involved the vessel Frau Anna Howina which was bound from Lisbon to Hamburg. The cargo of saltpetre was condemned on the ground that it was ultimately destined for Russia.¹⁹ The British had always asserted the right of neutrals to trade freely between neutral ports until the Boer War when they confiscated cargoes on the ground of ultimate enemy destination.²⁰

The British application of the Doctrine of Continuous Voyage, however, as implemented by the Order in Council of October 29, 1914, was a new and distinct departure from established principles of international law, which destroyed legitimate with Germany and severely handicapped legitimate neutral commerce.²¹ Possible trade with Germany through contiguous countries forced the British to rely upon broad interpretations and applications of the rules regarding contraband.

¹⁸Oppenheim, op. cit., II, 500.

¹⁹Garner, op. cit., II, 297.

²⁰Ibid.

²¹E. G. Trimble, "Violations of Maritime Law by Allied Powers During The World War," The American Journal of International Law, 24 (1930), 84.

The English maintained that the United States had protested a right which she had exercised in treating contraband during the Civil War. Sir Cecil Spring-Rice said in part:

As you are aware the Supreme Court of the United States in 1863 considered vessels as carrying contraband, although sailing from one neutral port to another, if the goods concerned were destined to be transported by land or sea from the neutral port of landing into the enemy's territory. It then decided that the character of the goods is determined by their ultimate destination, and this doctrine was at the time acquiesced in by Great Britain, though her own trade was the chief sufferer.²²

The United States during the Civil War held vessels to be carrying contraband on proof that goods were eventually to be transhipped to the enemy even though the vessels involved were sailing between one neutral port and another. These cases dealt with the Springbok and the Peterhoff.²³ It is important to point out that the cases also were treated under breach of blockade. The rulings established the "Doctrine of Continuous Transport" in application of the Doctrine of Continuous Voyage.²⁴ In reviewing the decisions, Oppenheim said:

Thus another application of the doctrine of continuous voyage came into existence, since vessels whilst sailing between two neutral ports could only be considered to be carrying contraband when the transport first from one neutral port to another and afterwards from the latter to the enemy territory had been regarded as one continuous voyage.²⁵

²²Garner, op. cit., II, 300.

²³Oppenheim, op. cit., II, 501.

²⁴Ibid.

²⁵Ibid., p. 502.

There were, however, important differences between voyages referred to by His Majesty's Government during the Civil War and those of World War I. The cargoes never became part of the common stock of the country during the Civil War, but were immediately reloaded and re-forwarded to enemy territory. Discussing the subject Garner wrote:

In the recent war the neutral ports to which the destined cargoes were consigned were the ports not of small islands, but of countries with extensive populations among whom was a large demand for the particular commodities in question, a demand which was increased considerably by the cutting off of the accustomed supply at the outbreak of the war, from the neighboring belligerent States. They were not ports of call or transshipment. In every case the cargoes, were intended to be unloaded, after which they would become mixed with the common stock of the country, a transaction which interrupted the voyage; if a subsequent shipment took place, it would be an entirely new voyage and not a continuation of the initial voyage.²⁶

The Doctrine of Continuous Voyage held that absolute contraband going immediately to a neutral port but destined ultimately, in accordance with the evidence on board the vessel, to a belligerent, was subject to seizure before reaching the neutral port.²⁷ As previously observed, the British treatment of conditional contraband with regard to the Doctrine of Continuous Voyage was unprecedented in international law. The British application of the doctrine to contraband, as interpreted by the Order in Council of October 29, 1915, and which drew no distinction, in usage, between absolute and conditional contraband, could not be properly justified by reference to cases in the Civil War, because the analogies were not altogether correct.

²⁶ Garner, op. cit., II, 301.

²⁷ Trimble, op. cit., p. 81.

Foodstuffs from the outset of the War had been regarded as conditional contraband. After February, 1915, however, the most important items of this class of goods were, in effect, treated as absolute contraband.²⁸ The British had treated foodstuffs as contraband only when destined for the use of the military forces of the enemy.²⁹ In the past the British Government had resisted any attempt by nations to declare a foodstuff contraband. A leading English jurist had remarked:

Foodstuffs with a hostile destination can be considered contraband of war only if they are supplies for the enemy's forces. It is not sufficient that they are capable of being so used; it must be shown that this was in fact their intention at the time of the seizure.³⁰

The British had protested a similar position by Russia regarding foodstuffs as contraband in 1904, when Lord Landsdowne stated that such a step was "inconsistent with the law and practice of nations."³¹ This view was also held by the House of Commons during the considerations of the Declaration of London.

The United States Government did not protest so earnestly against the extension of the doctrine of contraband to goods formerly regarded as innocent, as unprecedented as they were, as to the methods of enforcing British policies.³² Especially irritating was the practice of visit and

²⁸ Garner, op. cit., II, 286.

²⁹ Ibid., p. 291.

³⁰ Ibid.

³¹ Ibid.

³² Ibid., p. 292.

search which was discussed earlier. The policy of taking vessels into port for inspection was without precedent in international law. The British defense for such action, of course, was that modern conditions of war had rendered search on the high seas ineffective thus making it necessary to take the ships into port.

The taking of vessels in with only meager suspicion was pursued to the fullest extent.³³ The practice was both exasperating and extremely costly to American shippers. Even discharging and port costs had to be borne by the neutral parties.

Costly detention resulting from sometimes fraudulent manifests was tried to be averted by certification of the cargoes by British Consuls who had witnessed the loading of the vessels. The British Government, however, refused to recognize the certificates as conclusive on the ground that they afforded no assurances that there would not be augmentation of the cargoes at sea. In several instances, cargoes so certified were seized and taken into port for further examination.³⁴ According to British naval prize regulations, it was provided "that in exercising the right of search the commander should be careful not to occasion the neutral ship any delay or deviation from her course that can be avoided and generally to cause as little annoyance as possible."³⁵ The annoyance, however, was great.

³³Garner, op. cit., II, 292.

³⁴Ibid., p. 295.

³⁵Ibid., pp. 292-93.

The Order in Council of March 11, 1915, established a blockade in everything but legal name. The measure prevented access to German ports of all articles whether contraband or not, thus effecting the result of blockade although not legally one eo nomine. The measure, however, went even further by applying the blockade to neutral ports as well as those of the enemy.

The definition of a blockade, states Oppenheim, is "the blockading by men-of-war of the approach to the enemy coast or a part of it for the purpose of preventing ingress and egress of vessels of all nations."³⁶ A blockade must also be universal to have legal existence. In other words, ships of all nations must be stopped. As provided in the Declaration of London a blockade must be declared either by government declaration or by a naval commander acting under its authority to so declare one.³⁷ A blockade must also be effective to maintain legal status.

The Order in Council of March 11, violated three fundamental principles of a blockade: (1) It was not maintained at close range, (2) Vessels going to neutral ports were stopped, (3) German ports on the Baltic Sea were left open to others.³⁸ Sir Samuel Evans, eminent prize jurist, called it a blockade for "political and journalistic purposes."³⁹ If viewed legally, it was no blockade at all, but it did, nonetheless.

³⁶ Oppenheim, op. cit., II, 450-51.

³⁷ Ibid., p. 456.

³⁸ Trimble, op. cit., p. 93.

³⁹ Ibid.

accomplish the same ends. In many ways it was more effective than a legal blockade for it encompassed both German and neutral ports as previously mentioned.

The British innovation proposed that the cargoes were not to be confiscated as in a legal blockade, but were to be disposed of by Prize Courts, provided they were not requisitioned by the government under certain enabling conditions.⁴⁰ The English realized that they could not legally prevent all goods from reaching Germany so a blockade of an unusual, but effective, nature was adopted.

The British based their defense for such action, among other things, upon retaliation for German transgressions of international law. It was also pointed out that the United States had, during the Civil War, applied the Doctrine of Continuous Voyage to blockade as well as to contraband.⁴¹ His Majesty's Government felt that the interpretation had to be applied to the existing situation to make the blockade effective, by extending it to neutral ports and this procedure was defensible within the established principles of international law. The important aspect of the Springbok Case, according to the British, was that adaptation of old rules should not be advanced unless they were in harmony with the general principles upon which established belligerent rights were based.⁴² This had been the spirit of the measure implemented by Great Britain for intercepting

⁴⁰Ibid., p. 93.

⁴¹Graham, op. cit., p. 156.

⁴²Ibid., pp. 156-57.

commerce to Germany. They had, however, changed the penalty for breach of blockade so that confiscation of vessels and goods was not permitted.⁴³

The British position regarding the blockade was untenable. It was clearly without the framework of established principles of international law. The earlier British view concerning the Springbok, as expressed by Sir Edward Grey himself, had been that it was extremely doubtful if the Doctrine of Continuous Voyage could be applicable to a vessel carrying non-contraband material, and this was the only instance where condemnation for breach of blockade alone was justified.⁴⁴

The two important means by which enemy commerce could be intercepted were blockade and contraband. These two methods are distinct although many times a single action involves both.

In this respect, it is well to append several paragraphs to draw out this distinction. Lord Loreburn, an English writer on naval war conduct, wrote:

The rule of international law which allows a belligerent state to capture contraband is based upon the theory that when two states are at war no neutrals are entitled to interfere. If a neutral state lends help to either of the combatants it exposes itself to attack from the other. If individual citizens do so by furnishing supplies by sea of a contraband character, they incur the risk of seizure and confiscation. Enemy capture is confined to enemy property. Blockade applies to property of all kinds if found in the prohibited zone and directly destined for the blockaded territory. But contraband is limited to property of a particular kind which is destined to the belligerent, and it may be captured anywhere at sea except in neutral waters. . . . Some states sometimes say that it cannot be captured unless its destination is to the belligerent territory and for

⁴³ Ibid., p. 157.

⁴⁴ Ibid., p. 159.

the belligerent government. The extreme view on the other side is that, no matter what its port of destination may be, it can be captured if it is intended ultimately to reach the belligerent territory. . . . The law of contraband may be used so as almost to extinguish neutral trade, and to produce nearly the same effect as a blockade without the risk and effect of employing a sufficient naval force.⁴⁵

These passages briefly present Lord Loreburn's concept of the principles of contraband as may be effective in the interception of enemy commerce. However, prior to the War, a distinguished German scholar, Niemeyer said:

The acceptance of the right of contraband of war means: You are unrestricted in the definition of war contraband. Consequently, through a proper handling of the meaning of war contraband you may evade the demands imposed upon blockade. By overstretching the right of contraband you may achieve approximately the results of an effective blockade that would otherwise be either impossible for you or else highly inconvenient. And by exercising as much as possible the right of contraband you may even suppress, under certain conditions, the imperfect, because locally restricted effect of an efficient blockade.⁴⁶

Niemeyer's remarks point out that since the ultimate effect of contraband and blockade is the same, the operation of both become somewhat identical. As regards the distinction between contraband and blockade Hall, author of a work on the laws of naval warfare, suggested:

The liability of a neutral merchant ship to be captured by a belligerent arises either because such a vessel is attempting to break a blockade, or because she is guilty of carrying contraband goods or is herself contraband--i.e., a vessel intended to be converted to a warlike use. The two causes of liability are to be carefully distinguished. There can only be a breach of blockade when one had been established, but it is illegal to carry contraband from the moment war has been declared. Sailing with any cargo or none to a blockaded place is illegal, but the

⁴⁵ Ibid.. pp. 86-87.

⁴⁶ Ibid.. p. 87.

liability for carriage of contraband depends entirely on the noxious nature of the cargo; for the object of blockade is to cut off all intercourse with a specific place, while the purpose of the latter is to cut off from the enemy everywhere articles of direct use to him in prosecuting the war. Again in blockade the ultimate destination of the ship is the test, but in the question of contraband it is that of the cargo. Finally the penalty for breach of blockade falls, as we have seen, on both ship and cargo, but for carrying contraband it falls primarily on the contraband goods, and except for loss of time and freight, only exceptionally on the vessel. Since, then liability depends on the nature of the cargo, it is necessary to consider what is to be regarded as contraband and what as innocent.⁴⁷

Great Britain had unquestionably violated the distinct fundamental principles of blockade and, British apologies notwithstanding, her policy could not be justified within the established principles of international law. A belligerent, however, does not always measure the success of a war tactic by its complete compliance with the accepted rules among nations.

As regards contraband it is interesting to note the success of its treatment, by the British, under the Doctrine of Continuous Transport. Ninety-nine per cent of contraband, whether absolute or conditional was captured as being in "continuous transport"--that is while in transit to a neutral port on the supposition that it was going to be transhipped overland to Germany.⁴⁸

The instrument for handling cases in litigation involving interference with neutral commerce was the Prize Court. The basis for its instruction as a court was the Orders in Council. Decisions of the

⁴⁷ *Ibid.*, pp. 87-88.

⁴⁸ Kenworthy and Young, *op. cit.*, p. 127.

British Prize Courts, in the most important cases, provided the greatest innovations in prize law.⁴⁹

Oppenheim maintained that trials of captured vessels by Prize Courts were municipal matters. The law administered by the Prize Courts was not international law. The courts in reality applied the law of their own country (municipal law).⁵⁰ He pointed out that only states were subject to international law, and not their courts, officials, or citizens as such. The law applied by National Prize Courts was not and could not be international law due to the differences between municipal law and international law and the previously mentioned fact.⁵¹ For example, if the Declaration of London had been ratified that would certainly have been international law binding upon the states, but only upon the states, and they would have had to incorporate that law into their municipal law, so that their Prize Courts would have been obligated to administer such law regarding prize cases in conformity with the Declaration.⁵² However, Oppenheim suggested:

A state which is a party to the Declaration and would nevertheless order its Prize Courts to apply a law which is in opposition to the Declaration of London, would commit an international delinquency, but its Prize Courts would be obliged to apply such law.⁵³

⁴⁹Trimble, op. cit., p. 58.

⁵⁰Oppenheim, op. cit., II, 553.

⁵¹Ibid., p. 554.

⁵²Ibid., pp. 554-55.

⁵³Ibid.

Many writers, however, were of the opinion that Prize Courts were international courts and the law administered was international law. Lord Stowell, an English prize judge, repeatedly held this view, as did a great majority of international writers on the subject.⁵⁴

H. Reason Pyke, in his treatise on the law of contraband, held the opinion that should a state pass a statute contrary to the general customs of civilized nations, the judge presiding would be bound to follow it.⁵⁵ In principle then, the Prize Court was not international but national in character. The sources of law might be the custom followed among nations, but the authorization to follow such law came from municipal legislation.⁵⁶

The natural question arose as to whether a Prize Court would be bound by municipal acts or rules if they were contrary to the established principles of international law. The Judicial Committee of the Privy Council did in fact act upon such a ruling in a decision handed down in the Zamora Case, 1916. The decision, describing the relation of Orders in Council to international law, read in part:

It cannot, of course, be disputed that a Prize Court, like any other court, is bound by the legislative enactments of its own sovereign state. . . . The fact, however, that the Prize Courts in this country would be bound by acts of the Imperial Legislature afford no ground for arguing that they are bound by the executive order of the King in Council. . . . If the Court is to decide judicially in accordance with what it conceives to be the law of nations it cannot, even in doubtful cases, take its direction from the Crown, which is a party to the proceedings.

⁵⁴Ibid., p. 554.

⁵⁵Pyke, op. cit., p. 216.

⁵⁶Ibid.

It must itself determine what the law is, according to the best of its ability, and its view, with whatever hesitation it be arrived at, must prevail over any executive order. Only in this way can it fulfill its function as a Prize Court and justify the confidence which other nations have hitherto placed in its decisions.

It cannot be assumed, until there be a decision of the Prize Court to that effect, that any executive order is contrary to law, and all such orders, if acquiesced in and not declared to be illegal, will, in course of time, be themselves evidence by which international law and usage may be established.⁵⁷

The decision declared that a Prize Court, which administered international law, was not bound by a prerogative Order in Council unless it directed mitigation of the Crown's right in favor of the claimant.⁵⁸ The claim of legislative rights for the King in Council was an erroneous dictum for courts ruling upon international law. The Judicial Committee of the Privy Council did hold, however, that a Prize Court would be bound by a legislative enactment of its own state, but this did not provide ground for arguing that same would be true for executive orders by the King in Council.

The British proclamation declaring the North Sea a war zone was another measure without legal justification. The Allies assumed control of a portion of the high seas which violated established principles of international law.⁵⁹ This was accomplished by placing mines in the area which necessitated neutral ships stopping for British in order to negotiate the mine fields, thus allowing visit and search in port. This

⁵⁷ Graham, op. cit., pp. 99-101.

⁵⁸ Morrissey, op. cit., p. 133.

⁵⁹ Trimble, op. cit., p. 83.

was without precedent, but drew no formal protest from the United States.

British contributions to Prize Court methods and procedures are also worthy of note. It had been generally held before World War I, as regards conditional contraband, that ship's papers proved destination of goods.⁶⁰ The old way of determining destination was that such evidence

was to come from on board the vessel.⁶¹ The British, however, held admissible to Prize Courts all types of evidence and the methods used to ascertain ultimate enemy destination relied upon mere presumption drawn from existing circumstances surrounding the transaction. Often goods were confiscated if the claimant could not positively prove that the goods were not ultimately to reach the enemy. This was despite the fact that in many cases the neutral governments had embargoed such goods prior to confiscation. It was nearly impossible, in most instances, for the claimant to prove or to supply positive evidence that the goods would not reach the enemy.⁶² To establish that goods were consigned to a neutral country or port was not enough. The claimant had also to prove that they were not intended by one means or another to reach the enemy territory after arriving at a neutral port.⁶³ This requirement necessitated positive proof.

⁶⁰ Ibid., p. 81

⁶¹ Ibid., p. 85.

⁶² Ibid.

⁶³ C. John Colombes, A Treatise of the Law of Prize (London: Sweet and Maxwell, 1926), p. 185.

If British Prize Court proceedings were in many ways a distinct departure from old principles, they were not ephemeral. Colombos, British prize law authority, discussing the subject of evidence, wrote in part:

A Prize Court is not restrained with regard to evidence by any confining rules such as are applicable to questions of municipal law, and is not governed or limited by the same strict technicalities. Evidence is thus accepted in the Prize Courts which would have been declared inadmissible in other national tribunals. Moreover, radical changes have been effected during the Great War in the practice hitherto prevailing.⁶⁴

The jurist further reasoned that a Prize Court must be "given the right to ascertain the truth by proper investigation and by the introduction of all kinds of evidence over and above ship's papers, provided that such evidence be true and material."⁶⁵ Certainly during the War the British had entertained all kinds of evidence in prize proceedings.

His Majesty's Government had clearly initiated numerous policies at variance with the established principles of international law. The treatment of contraband, blockade, and shifting the burden of proving the innocence of cargoes upon the claimant were but a few of an almost endless list of unprecedented interference with neutral trade. The question of undue interference with neutral commerce generally, including search, detention, condemnation, confiscation, treatment of contraband, blockade, and procedures in the Prize Courts, was a very complex problem which created new innovations in international law.

⁶⁴Ibid., p. 313.

⁶⁵Ibid., p. 317.

Great Britain had retreated from many of her earlier views regarding interference with neutral rights. In the United States Congress numerous members were vocally cognizant of this fact. Senator Smith speaking about British policy with regard to conditional contraband and burden of proof said:

. . . Every decision of Great Britain, every text writer Great Britain, and every statesman of Great Britain for the last hundred years dealing with the subject has denounced any claim of right to interfere with neutral trade simply because it might in some way be used by an enemy army or navy. The rule has been laid down without interruption that the belligerent seizing the goods must prove that they were intended for the army and navy, and that they were not for the use of non-combatants.⁶⁶

A fellow member of the Senate, Senator Walsh, in refutation of the British claim that the United States had blockaded neutral ports during the Civil War, cited two English authorities on international law, Hall and Oppenheim, who pointed out that during that War the United States had ruled against the blockading of a neutral port. This was the Peterhoff Case as regarded blockade, holding that neutral trade with the Mexican port of Matamoras could not be prohibited because it was of neutral character.⁶⁷

Congressional resentment notwithstanding, Great Britain and her Allies were fighting for their very survival and these Powers felt that new interpretations and applications of old principles of international law were necessary to prevent a German victory. None were prepared to forsake final triumph for judicial niceties.

⁶⁶ United States Congress, Senate, 64th Congress, 1st Session, Congressional Record, Vol. LIII, Part 2 (Washington: Government Printing Office, 1916), p. 1297.

⁶⁷ Ibid., p. 1673.

The British contention that modern conditions of war necessitated alterations of old principles was not without reasonable foundation. The War did bring great changes in the conduct of war, which unquestionably demanded new appreciation of new problems with regard to international law. For example it would have probably been impossible to draw up a list of contraband which would have held good for all times and in all circumstances. As H. Reason Pyke stated: "The list of contraband articles must be arrived at by the application of general principles to particular circumstances of specific wars and must have elasticity for conditions of modern warfare greatly change."⁶⁸

Nevertheless, the unique British interpretations and practical measures were, in many instances, contrary to existing international codes of guidance. The policies were, however, effective in achieving the stoppage of German trade, and this was, of course, the determining factor in achieving the economic starvation of the Central Powers. As Trimble wrote:

These interpretations of the law made by the Orders in Council and the court decisions, destroyed, as a practical matter, the distinction between the two classes of contraband goods, and all but stopped the trade of the United States with the neutral countries adjacent to Germany, as well as with Germany. Having made these changes, all that was now necessary to increase the economic pressure on the Central Powers was to enlarge the contraband list.⁶⁹

The British, indeed, intensified their economic pressures on Germany despite opinions voiced about international law. A Command Paper

⁶⁸Pyke, op. cit., pp. 178-79.

⁶⁹Colombos, op. cit., p. 181.

dated April 13, 1916, officially suppressed all distinction between absolute and conditional contraband.⁷⁰ The Declaration of London with its frequent and fundamental modifications was officially abandoned by Great Britain in July, 1916, but for all practical purposes it had been discarded long before.

⁷⁰Trimble, op. cit., p. 79.

CHAPTER V

THE KIM CASE

In November, 1914, British cruisers captured four vessels, the Kim, the Alfred Nobel, the Bjornsterline Bjornson, and the Fridland, on the ground that their cargoes were conditional contraband ultimately destined for the government or armed forces of Germany. The ships, with the exception of the Kim, had sailed in October--the latter had started her voyage on November 11.¹ The Kim also carried rubber which was declared absolute contraband by the Order in Council of October 29, 1914.

The Kim, at the time of capture, was under time charter to the Gans Steamship Company, an American corporation with a German president. The corporation's general agent for Europe was also German.² Bound from New York to Copenhagen, the vessel carried a cargo of lard, meat products, oil stocks, wheat and other foodstuffs, in addition to the parcel of rubber.³

After a long delay, the four cases were brought before a British Prize Court in July, 1915, presided over by Sir Samuel Evans. For purposes of adjudication the cases were dealt with simultaneously.

The Kim Case was decided in accordance with the rules and regulations as provided in the Order in Council of October 29, 1914, since

¹Law Reports, Probate Division 216-17 (1915).

²Ibid.

³Ibid.

her sailing date had been November 11, or after the proclamation of that Order.⁴ The other three vessels were treated in accordance with the general rules of international law as they had sailed prior to October 29, and consequently were not subject to the Order. In addition, the October Order had repealed that of August 20, so that Order was held to be without effect.

The main points of consideration were whether the Doctrine of Continuous Voyage applied; that is whether the goods could be condemned irrespective of neutral destination of the vessels transporting them if circumstances indicated that they had been consigned to Copenhagen with the intention on the part of the shippers of ultimate destination to Germany, either by transshipment upon seas or by internal communication over land. If that be so it had to be determined whether the circumstances before the Court warranted inference of such intention.⁵

The American meat packing companies involved contended, with regard to foodstuffs, that since the goods were conditional contraband, it must be shown that they were intended for the government or armed forces of Germany. It must also be shown that this intent existed from the first, and the onus of proving the intent rested with the Crown.⁶ They further argued that the Doctrine of Continuous Voyage could not be applied because this doctrine was applicable only when the destination was

⁴ 113 Law Times Reports 1071 (September, 1915-February, 1916). Hereafter cited as 113 L.T. Reports.

⁵ H. Reason Pyke, "The Kim Case," The Law Quarterly Review, XXXII (1916), 50. Hereafter cited as "The Kim Case."

⁶ Garner, op. cit., II, 304.

that to which the original consignor intended the goods to be sent, and in this case the destination was a neutral port.⁷ To allow the Crown's position, insisted the claimants, that foodstuffs going to Germany could be treated as if they were intended for the use of the government or armed forces because the entire German nation was under arms, would be to render the established distinction between absolute and conditional contraband inoperative. The Crown's claim that the practice of the German Government in making requisitions upon merchants for food supplies made possible the taking of any goods going to Germany for the use of the military, and thereby treating them as absolute contraband could not be held.⁸ The fact, if it was a fact, that the goods were destined to enemy territory and so might ultimately find their way to the enemy government or armed forces did not render the goods confiscable.

The claimants argued, furthermore, that the test of a continuous voyage, as Sir Edward Grey had instructed his delegates prior to the London Naval Conference, was "whether the whole transaction was made in pursuance of a single mercantile transaction, preconceived by the consigner from the outset."⁹ It was pointed out that the Doctrine of Continuous Voyage had never been applied to a case where the commodities upon arrival at a neutral port had been sold there, and it could not be applied where the evidence did nothing more than show that they were sent to the

⁷ Ibid., p. 305.

⁸ Ibid.

⁹ Ibid.

neutral port in hope of finding a market for delivery elsewhere.¹⁰

The question was also raised as to whether the Order in Council was binding upon the Court. The claimants did not feel that it was competent for the Crown to alter existing rules of international law as affected neutral rights by Orders in Council, and the October Order had so altered these laws, and therefore was not binding upon the Court.¹¹

The American shippers maintained that the goods had remained their property and possessed ownership at the time of their seizure.¹² The other claimants, persons or firms in Denmark, contended that they had become purchasers of the foodstuffs.

One claim was based on the ground that the goods were the property of the firms as neutrals, shipped on neutral vessels, and consigned to a neutral port. The goods were not intended for sale to or use by or on behalf of any enemy government or its armed forces. An affidavit was filed on behalf of Armour and Company stating that "the whole of the said goods were shipped to the order of their agent in Copenhagen for sale in the agent's own district in the ordinary course of business."¹³ The various claimants insisted that there was no positive evidence showing that the goods in question were intended for the use of the government or armed forces of the enemy.

¹⁰ Ibid.

¹¹ Ibid.

¹² Law Reports, Probate Division 219 (1915).

¹³ Ibid., pp. 219-20.

The Crown claimed that the goods were intended to be transmitted from Copenhagen for the use of the enemy government or its armed forces. Therefore, the Doctrine of Continuous Voyage applied to make the whole venture an illegal trading from the beginning. The Attorney-General pointed out, on behalf of the State, that since the outbreak of the War Germany had been using Copenhagen as a depot for provisioning her troops. Previous trade had been diverted to Copenhagen, a neutral port used by neutral shippers in America employing neutral bottoms.¹⁴

Litigation began on July 12, 1915, and the judgment with regard to the cargoes was delivered by Sir Samuel Evans on September 16 of that year. The question before the Court pertained to confiscability of the cargoes only.

The opinion was quite lengthy and systematically disposed of each particular argument. Sir Samuel Evans said that the vessels were captured on the high seas, and their cargoes were seized on the ground that they were conditional contraband, alleged to be confiscable in the circumstances with the exception of a small amount of rubber on board the Kim to be treated as absolute contraband.¹⁵

He pointed out that Denmark was a small country of less than three million population, and was an exporting not an importing country with regard to foodstuffs.¹⁶ Its geographical situation gave great

¹⁴Ibid., p. 219.

¹⁵Ibid., p. 220.

¹⁶Ibid., p. 222.

access to the German cities of Hamburg, Altona, Lubeck, Stettin, and Berlin. Evans presented figures showing the annual quantity of lard, from all sources, consigned to or imported into Denmark during the three year period 1911-1913, which was 1,459,000 pounds. The quantity of lard on the vessels in question alone was 19,252,000 pounds.¹⁷ The Crown had given in evidence that the United States had exported to Scandinavia during October and November, 1914, 50,647,849 pounds of lard as compared with 854,856 pounds for the same months in 1913--an increase of 49,792,993 pounds or nearly sixty times the imports for the corresponding months of 1913.¹⁸

The large quantity of lard exported to Germany before the War, some 68,664,975 pounds during the period August to December, 1913, had fallen to 23,800 pounds for the same period in 1914. Similar exports to Scandinavian countries, however, increased from 2,125,579 pounds to 59,694,447 pounds.¹⁹ These facts led Evans to the conclusion that most of the lard consignments were actually intended for ultimate German destination. These were general observations but were in no way conclusive upon questions pertaining to the confiscability of goods seized relative to consecutive voyage, hostile quality, and hostile destination.²⁰

The enormous increase in the traffic of foodstuffs from the United States to Scandinavian countries, however, created a strong presumption

¹⁷ Ibid., p. 223.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid., p. 224.

of ultimate enemy destination. In view of the statistics quoted, it could hardly be assumed that the final transaction rested in Denmark.

The evidence revealed, or seemed to reveal, that the goods in question were shipped to Copenhagen, in part to named consignees, however, in the greater number, to agents of the packers or to their order. These agents were in reality not neutral buyers, but persons employed by the litigant companies in Germany and who had established residency in Copenhagen for the purpose of insuring the immediate transportation of food-stuffs to Germany.²¹

Evans referred to a cable sent by an agent of one of the American firms dated January 24, 1915, it stated: "Don't ship any lard Copenhagen, export prohibited."²² He felt the telegram was both material and important even if it was after the date of the vessel's capture. It testified to the fact that Denmark did not require lard, and the previous importations of the product into Denmark was only an intermediate step for transshipment to Germany.

During the course of the trial, Sir Samuel Evans had inquired of a counsel for one of the packing firms if, in respect to foodstuffs consigned to their own order, or to that of their agent at Copenhagen and not to an independent consignee, they were "intended for a Danish market or for the German." The counselor answered: "My submission is that there is no evidence as to which they were intended for in regard to any specific consignment, but that it was expected the the great bulk would find

²¹Law Reports, Probate Division 231-36 (1915).

²²Ibid., p. 236.

its way to Germany ultimately is obvious."²³ Evans replied: "In other words, those goods would not have been sent to Denmark if the Germans were not close by?" The Defense: "That is obvious."²⁴

Evans called attention to the fact that the claimants did not give the Court any information regarding the arrangements made for selling the greater portion of the cargoes to Germany of any consignees or intended consignees. All of this information was within the power of the companies to give. The counsel for Morris and Company, one of the American packing firms, had offered to produce evidence revealing the amount of lard and other foodstuffs the company had supplied to Germany during the three years prior to the War. This, however, was never done.²⁵

Armour and Company argued that their agents had strict instructions to confine their sales to Denmark, and other Scandinavian countries. The Copenhagen office, however, was small and the company's principal European office before the War had been in Frankfurt. The company had offered no information as to what became of their Frankfurt after the War commenced. Furthermore, no evidence was given concerning transactions made at the Copenhagen office. Records revealed that Armour alone had shipped twenty times as much lard to Copenhagen as had been shipped to all of Scandinavia by American companies for the corresponding period in 1913. It was also shown that the company had shipped from October to December, 1914, pork products in amounts equivalent to their entire export

²³ Ibid., p. 237.

²⁴ Ibid.

²⁵ Ibid., p. 238.

to Copenhagen for the previous eight years.²⁶ This was neither contested nor denied by the company.

Armour and Company was also extended the opportunity to produce figures relating to such products shipped to Germany in the three year period before the War. No such statement was produced.²⁷

The company contended that the goods in question were their property as neutrals shipped on neutral vessels, and consigned to a neutral port. Also, the goods were not intended for sale to or use by or on behalf of any enemy government, or its armed forces.²⁸ This position was supported by sworn affidavits.

Evans maintained that the defense had failed to give any explanation as to the shipment, or the sale of the goods the company claimed. He pointed out, furthermore, that part of the shipment contained tins of meat which had great adaptability for use by enemy troops in the field.

It is interesting to note that one counselor for Armour and Company did not rest his defense upon the affidavits. He said: "My case is not that they were all to be consumed in Denmark or Norway; my case is that they were not consigned to the German forces, and it was almost certain there was no continuous voyage."²⁹ The Solicitor-General queried: "I think I heard my learned friend say a moment ago that his case was not

²⁶ Ibid., p. 240.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Law Reports, Probate Division 243 (1915).

that these goods were destined for Danish consumption but for German civilian population."³⁰ The defense replied: "No, I said our case was not that the goods were intended for consumption in Denmark, but that the persons to whom they were consigned sold them to Germany."³¹

In the opinion of Evans, however, it remained fact that less than one-fifth of the goods had been sold to definite consignees and more than four-fifths had not been sold, and Armour and Company was claiming the products on the ground that they remained their property. He could not allow this line to be correct.

The claimant's business was purported to be bona fide neutral trade between neutral buyers in neutral ports. With few exceptions there were no invoices, insurance policies, drafts, or other proofs of sale or payment presented concerning the transactions. On this point Sir Samuel Evans said:

Finally, I note that the claimants did not produce any letter, telegram, contract, or any other document passing between them and their agents in Copenhagen touching on any part of the enormous quantities of goods shipped; and not one single book of account, or commercial document of any kind kept by their agents in Copenhagen, dealing with the goods claimed, was disclosed.³²

Sir Samuel Evans quickly disposed of the question of the thirty-nine cases of rubber on board the Kim, treated as absolute contraband. The rubber was consigned to one Fritsch, the German Vice-Consul at Stockholm. The official was also a forwarding agent.³³ The shipper was

³⁰ Ibid.

³¹ Ibid.

³² Ibid., p. 244.

³³ Ibid., p. 267.

W. T. Baird who claimed ownership of the goods. No commercial documents were admitted into Court to substantiate his claim nor was there any apparent reservation by the shipper of the right to dispose of the goods on sale to Fritsch or to an intermediary person named Frankfurter. Evans was not satisfied that Baird had sustained his claim that he was the owner of the goods or that any property remained to him after the shipment of the goods.³⁴ In conclusion of the claim, Evans said in part:

Taking the whole circumstances into consideration, I am justified in drawing the inference that the rubber was on its way to enemy territory through Fritsch, the German Consul; even if the claimant had made out his claim to be the owner, I find that the rubber was confiscable as absolute contraband.³⁵

After disposing of the individual claims, Evans turned his attention to the summation of the case in general opinion. He suggested that the general character of the cargoes involved was that the foodstuffs were suitable for use by enemy troops and some specific items of a type not usually supplied to the civilian population. The favorable location of Copenhagen for German transportation of goods was obvious.

In Evan's opinion if international law was to be adequate it must be in keeping or "have regard" to all the circumstances of the time.³⁶ Two principles of international law were involved in this case; (1) "continuous voyage" or "continuous transportation," (2) ultimate destination of conditional contraband and absolute contraband respectively.

³⁴ Ibid., p. 268.

³⁵ Ibid.

³⁶ Ibid., p. 272.

Evans first discussed the Doctrine of Continuous Voyage. He reviewed at length its history and development. The British, Evans maintained, were not the first to apply the doctrine to the carriage of contraband. The United States had so applied and extended it during the Civil War, and has received the approval of the British Government, if not British jurists.³⁷ Lord Salisbury had defended it at the time of the Boer War in connection with the Delagoa Bay Cases.

The Doctrine of Continuous Voyage was conceded in explicit language by the Declaration of London stating that "it is immaterial whether the carriage of the goods is direct, or entails transshipment, or a subsequent transport by land."³⁸ In the case of conditional contraband, however, it was held that the doctrine was inoperative in this connection except where the enemy country had no seaboard.³⁹ To Evans this exclusion was illogical. In regard to this point he said in part:

If it is a right that a belligerent should be permitted to capture absolute contraband proceeding by various voyage or transport with an ultimate destination for the enemy territory, why should he not be allowed to capture goods, which though not absolutely contraband, became contraband by reason of further destination to the enemy Government or its armed forces? And with the facilities of transportation by sea and by land which now exist the right of a belligerent to capture conditional contraband would be of a very shadowy value if a mere consignment to a neutral port were sufficient to protect the goods. It appears also to be obvious that in these days of easy transit, if the doctrine of continuous voyage or continuous transportation is to hold at all, it must cover not only voyage from port to port at sea, but also transport by land

³⁷ Ibid.

³⁸ Ibid., p. 273.

³⁹ Ibid.

until the real, as distinguished from the merely ostensible destination of the goods is reached.⁴⁰

Evans pointed out by analogy that the policies pursued by the British were merely outgrowths of those adopted by the United States when she was a belligerent. The prize jurist said:

I have no hesitation in pronouncing that, in my view, the doctrine of continuous voyage, or transportation, both in relation to carriage by sea and to carriage over land, had become part of the law of nations at the commencement of the present war, in accordance with the principles of recognized legal decisions, and with the views of the great body of modern jurists, and also with the practice of nations in recent maritime warfare.⁴¹

The result was that the Court was both entitled and bound to take a more extended view as to the primary consignments of the goods and ascertain their real and ultimate destination rather than the ostensible one. The test of real destination was simply whether the cargoes were consigned to a neutral port for the purpose of being incorporated into the common stock of the nation.⁴² Another important way of distinguishing the real destination from the ostensible one, Evans suggested, was by the consignment "to order or assigns" without naming a specific consignee.

As regarded the Kim, her cargoes were being tried in accordance with the provisions as provided in the Order in Council of October 29, 1914, which dealt specifically with "to order" consignments, and it appeared that they should have been dealt with under that Order, rather

⁴⁰ Law Reports, Probate Division 273-74 (1915).

⁴¹ Ibid., p. 275.

⁴² 113 L.T. Reports, p. 1070.

than the more extensive doctrine which had become the law of the nations prior to the War, since the vessels sailing date had been subsequent to that Order. But since the cargoes were consigned "to order" the result, in either case, would have been the same.⁴³

Evans admitted, however, that non-specific consignees was not conclusive proof of intention for ultimate enemy destination, but it made such shippers suspect, and it remained with the shipper to prove the legitimacy of intent.⁴⁴ Pursuing the point further, he said: "Whenever destination comes in question, certainty as to it is seldom possible, in such cases as these, 'highly probable destination' is enough in the absence of satisfactory evidence for the shippers."⁴⁵

The jurist was in no way hesitant in stating that the cargoes in question were not destined for consumption or use in Denmark or that they were to be incorporated into the general stock of the country by sale or otherwise. Copenhagen was not the real destination of the goods, but, at the time of capture, they were ultimately intended for Germany.

Evans next addressed himself to the question of the validity of the Order in Council of October 29, 1914. He said that the proclamation was in no way a violation of international law.⁴⁶ The Order in Council had proceeded from the very basis of existing international law. Evans

⁴³Pyke, "The Kim Case," p. 54.

⁴⁴Law Reports, Probate Division 277 (1915).

⁴⁵113 L.T. Reports, p. 1071.

⁴⁶Law Reports, Probate Division 279 (1915).

pointed out that at the time of the London Naval Conference which produced the Declaration of London all of the Allied Powers and the United States were in favor of continuing to apply the Doctrine of Continuous Voyage or Transport to conditional contraband.⁴⁷

In regard to the modifications of the Declaration of London effected by the Order in Council relating to presumption and onus of proof when goods were consigned "to order," Evans held those to be matters affecting the rules and methods of evidence and proof in the Prize Court, and were not in violation of the accepted principles of international law.⁴⁸ Discussing this point he said:

The effect of the Order in Council is that, in addition to the presumption laid down in article 34 of the Declaration of London, a presumption of enemy destination as defined by article 33 shall be presumed to exist if the goods are consigned to or for an agent of the enemy State, or to a person in the enemy territory, or if they are consigned 'to order' or if the ship's papers do not show who the consignee is; but in the latter cases the owners may, if they are able, prove that the destination is innocent.⁴⁹

All goods claimed by the shippers on the Kim were consigned to their own order, or to their agents, and not to any independent consignee.⁵⁰ The claimants failed to prove that their destination was innocent to the satisfaction of the Court.

It had been contended by the claimants that liability to capture under the Order in Council did not mean liability to confiscation or

⁴⁷ Ibid.

⁴⁸ Ibid., pp. 279-80.

⁴⁹ Ibid., p. 280.

⁵⁰ Ibid.

condemnation. In refutation of this, Sir Samule Evans stated that he was of the opinion that the goods claimed by all shippers on board the Kin were confiscable as lawful prize as provided in the provisions of the October Order in Council.⁵¹

Evans next considered the question of whether the goods going to Germany were intended for use by its government or armed forces. First it was argued that the goods in question were adopted for such use; some had great adaptability for immediate warlike purposes. He then referred to Grey's note of February 10, 1915, which stated that when the distinction between the civil population and the armed forces disappears the reason for drawing distinction between foodstuffs intended for the civil population and the armed forces also disappears.⁵²

The jurist further reasoned that when so large a population of a state was in the military forces and there was no clear evidence distinguishing private accounts from those of the government, the burden of proof should rest with the claimants. He was convinced that whatever the circumstances the military would receive the largest portion of any foodstuffs going to Germany.⁵³

In regard to the problem of proof of intention resting with the shippers, Evans felt it was necessary for such proof to be submitted by the claimants. It had been argued by the defendants that the Crown was

⁵¹ Ibid.

⁵² Ibid., p. 281.

⁵³ Ibid., p. 282.

obliged to show and prove original intent on the part of the shippers to supply the enemy government or armed forces. This was, in many cases, impossible for the captors to do owing to the merchant's modern methods of covering up suspicious deals. He said that if the captors had to prove such an arrangement (to supply the enemy), absolutely and affirmatively, to justify capture and condemnation the belligerent's rights to stop articles of contraband from reaching a hostile destination would become nugatory.⁵⁴ In dismissing the claimants' contention, he said in part:

It is not a crime to dispatch contraband to belligerents. It can be quite legitimately sent subject to the risk of capture; but the argument proceeded as if it were essential for the captors to prove the intention as strictly as would be necessary in a criminal trial; and as if all shippers needed to do was to be silent, to offer no explanation, and to adopt the attitude towards the Crown, 'Prove our hostile intention if you can'.⁵⁵

Evans, however, went even further and maintained that it was not necessary for the captors to prove intention at the beginning of the voyage. He reasoned that if there was an intention formed either at the time of the original shipment, or afterwards, to send the goods to an ultimate enemy destination, the continuity of the voyage would not be broken, relating to the cargo, by any transaction at the intermediate port.⁵⁶

The incumbency which rested upon the captor was to first prove facts from which a reasonable inference of hostile destination could be

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

drawn, subject to rebuttal by the claimants. Evans felt that intention on the part of the shipper could be established by "inference from surrounding circumstances relating to the shipment of and dealings with the goods."⁵⁷ The jurist argued in part:

Cargoes are inanimate things, and they must be sent on their way by persons. If that is all that was meant by counsel for the claimants when they argued that intention must be proved, their contention may be conceded. But it need not be an 'intention' proved strictly to have existed at the beginning of the voyage, or as an obligation under a definite commercial bargain.⁵⁸

The onus of proof of intent had rested with the claimants and they had not satisfactorily proved the transaction innocent. The reasons for inferring ultimate hostile destination were: (1) Some goods were adopted for military use and others for the manufacture of war munitions. (2) It was inferred under the Doctrine of Continuous Voyage that the goods were ultimately destined for some contiguous port such as Hamburg, Lubeck, or Stettin. (3) Because of the conditions in Germany which rendered it impossible to assume that the foodstuffs would not, in some proportion, be used as supplies for the armed forces. (4) Because the claimants failed to produce evidence to refute the presumption of the warlike destination inferred by all circumstances.⁵⁹

In conclusion of the Case Sir Samuel Evans stated:

For the many reasons which I have given in the course of this judgment and which do not require recapitulation, or even summary, I have come to the clear conclusion from the facts proved

⁵⁷Ibid., p. 284.

⁵⁸Ibid.

⁵⁹Pyke, "The Kim Case," pp. 67-68.

and the reasonable and, indeed, irresistible inferences from them, that the cargoes claimed by the shippers were not on their way to Denmark to be incorporated into the common stock of that country by consumption, or bona fide sale, or otherwise; but, on the contrary, that they were on their way not only to German territory, but also to the German Government and their armed forces for naval and military use as their real ultimate destination.

To hold contrary would be to allow one's eyes to be filled by the dust of theories and technicalities, and to be blinded to the realities of the case.⁶⁰

Held:

That as the doctrine of continuous voyage and transportation, both as regards carriage by sea and land, was a part of international law at the time of the commencement of the war in August, 1914, and was applicable to conditional as well as absolute contraband, all goods which were intended for use of the German Government, although nominally having Copenhagen as their port of destination, must be condemned as lawful prize.⁶¹

Shortly after disposition of the Case, the shippers filed a protest with the United States Department of State against the decision of the Prize Court and requested diplomatic intervention in their behalf in an effort to obtain reparations for the losses which had sustained.⁶² They alleged that the judgment was unsupported by facts and was based upon inferences and presumptions. The British Government agreed to compensate the shippers for losses incurred, and, after some delay, the value of the goods was paid to representatives of the companies. Upon payment, the shippers expressed their appreciation of the fair treatment

⁶⁰ Law Reports, Probate Division 286 (1915).

⁶¹ 113 L.T. Reports, p. 1064.

⁶² Garner, op. cit., II, 303-08.

extended them.⁶³

In reviewing Evan's decision in the Kim Case, the Law Journal stated in part:

But his considered judgment in the Kim and three other Scandinavian ships embodies the most remarkable development which he has yet given the Law of Nations. The effect of the judgment is to condemn as contraband enormous cargoes of provisions which were captured on their way from American to Scandinavian ports consigned to apparently neutral consignees, and the grounds of the decision is that the cargoes were destined by the consigners to find their way to Germany and to be used there for the provisioning of the naval and military forces. There was little direct evidence to connect the goods with the enemy Government, but on the other hand, a large number of circumstances contrived to make that hostile destination very probable, and the President, ruling that once a line of suspicion was established the burden of proof of innocent trade was on the neutral merchant, held that, the onus not being discharged, the penalty for contraband attached. . . . In the present case that highly probable destination could be inferred from the nature of the consignment, which was many times as large in bulk as the ordinary annual importation of such commodities into Scandinavia, from the proved existence of an extensive trade between the Scandinavian ports and the chief German bases of supply, from the connection of the consignees with enemy firms which were supplying the forces, and lastly, from the failure of the claimants to produce documents which might establish either a genuine neutral market or an intention to use cargoes for the civil population of the enemy territory. What is novel in the decision is, first the inference of enemy destination for conditional contraband from the cumulative effect of a number of elements of suspicion, and secondly, the inference of employment for the Government purposes from general reasoning without any actual proof from the ship's papers.⁶⁴

One final point should be mentioned in the adjudication of the Case, and that is the infectious nature of contraband as viewed by the British. Sir Samuel Evans pointed out:

⁶³Ibid.

⁶⁴50 Law Journal 450-60 (1915).

Contraband articles are said to be of an infectious nature, and they contaminate the whole cargo belonging to the same owners. The innocence of any particular article is not usually admitted to exempt it from the general confiscation.⁶⁵

Although the Case was not finally decided until September, 1915, the British had developed the policy of determining reasonable imports for Scandinavian countries from an index of previous during the preceding months.

Sir Samuel Evans, with Kim Case, began treating all German ports as bases of military supplies, thus making goods which were conditional contraband confiscable when going to German ports, especially the ports of Hamburg, Lubeck and Stettin.⁶⁶ Even more remarkable, however, was the condemnation of conditional contraband consigned to neutral consignees in neutral ports. The importance of this practice is obvious.

In October, 1915, rationing committees were created in London to determine import quotas for Holland and the Scandinavian countries.⁶⁷ This was a very important addition to the program for the economic strangulation of Germany, which were: (1) The extension of the principle of contraband. (2) The unique blockade established by the Reprisal Order in Council. (3) The rationing system.⁶⁸

The British, however, realized that they could not completely rely upon individual rulings in prize law to effect an efficient quota system.

⁶⁵ Law Reports, Probate Division 286 (1915).

⁶⁶ Trimble, op. cit., p. 85.

⁶⁷ Seymour, American Diplomacy, p. 43.

⁶⁸ Ibid., p. 44.

It was all the more apparent to British officials that they must continue to negotiate trade agreements with Scandinavian neutrals guaranteeing both domestic consumption of imports and acceptable restraints upon the amount of goods permitted by the Allies to reach them.⁶⁹

In late 1915, British attempts at negotiations for general rationing agreements with the Governments of Sweden and Norway failed. This failure to achieve general agreements notwithstanding, negotiations with individual firms and trade associations for trade agreements continued. The British had been quite successful in reaching commercial controls with the Danes and Dutch.⁷⁰

⁶⁹ Marion C. Siney, The Allied Blockade of Germany 1914-1917 (Ann Arbor: The University of Michigan Press, 1957), p. 82.

⁷⁰ Ibid., pp. 116-122.

CONCLUSION

The Anglo-American controversy during World War I over neutral rights in general and that concerning blockade and contraband in particular presents an interesting if complex study. The British were responsible for many remarkable interpretations and extensions of previously accepted principles of international law. Innovations in the Law of Nations occasioned by the conflict resulted, for the most part, from a series of Orders in Council and rulings handed in British Prize Court decisions. There can be little doubt that many British practices were illegal and completely without precedent in international law.¹

Specific British treatment accorded important rules and doctrines affecting neutral rights in time of war has been discussed in the main body of the thesis. The Kim Case was also reviewed in addition to legal considerations of British policies relative to blockade and contraband. The important remaining conclusion requires an evaluation of the controversy between the United States and Great Britain concerning neutral commercial rights.

The British war policy which so complicated her relations with the United States was governed by necessity. International law was either altered or circumvented whenever in direct opposition to belligerent interests. The shaping of international law in time of war to fit national interests is not an unique procedure, indeed, history abounds with such examples. Great Britain, in reality, had no practical

¹Cf., pp. 92, 94, 95-97, 100-101, 107.

alternative but to pursue the course of action she did pursue.

British policies during the Great War, however, by their very nature carried an attendant difficulty. Motivated by a belief that ultimate victory in the War might possibly hinge upon the economic starvation of the Central Powers, the British activated measures which struck at a traditionally tender spot in American affairs—that of neutral commerce and commercial rights. Throughout the history of the United States, any inhibition of or interference with American commercial rights and interests had been met with especial displeasure.

The situation resulting from British interference with neutral commerce might have precipitated the complete rupture of peaceful Anglo-American relations. The fact that no such rupture occurred may be attributed to several factors: (1) Germany's unrestricted use of the submarine; (2) Popular sentiment in the United States for the Allied cause; (3) The intent of the United States and Great Britain to prolong their controversies by means of technical diplomatic notes.

It is difficult to arrive at an exact assessment of the role each force played in the preservation of Anglo-American friendship. Obviously Germany's policies were misguided from the standpoint of her relations with the United States. What would have happened if Germany had discontinued the indiscriminate use of the submarine? No one can answer that question with complete certainty. The fact is that she did continue to employ it and this particular measure became, perhaps, the most important factor in the destruction of a sound German-American relationship. Indeed, German conduct as a whole so enraged the American

public that anything but a peaceful association between the United States and Great Britain was hardly possible even in light of the great controversy over neutral rights.

Public opinion in the United States was largely pro-Ally from the beginning of the War and as such was an important factor contributing to the British diplomatic victory. The sympathy for the Allied cause was not only manifest in the press and among large segments of the general public, but was also apparent in governmental circles at all levels. No one could entertain for a moment a belief that Wilson could have embraced any form of kaiserism. This was also true of House, Bryan and Lansing. As the War progressed that section of the public which might have been pro-German was administered a lethal blow by Germany's devastating submarine warfare. The German genius for doing exactly the wrong thing at exactly the wrong time was an extremely important stabilizing force in the preservation of Anglo-American good will.

The British, on the other hand, extended the contraband lists without regard to precedents in international law. The Allies also established an illegal blockade and enforced it. The British Government sought and obtained American acquiescence to a number of questionable practices. In view of all of the voluminous representations presented at the Foreign Office, however, the United States did not win a major concession from the British with regard to neutral rights either during the War or after its conclusion.

The United States unquestionably held great economic power over the Allies, the extent of which her leaders failed to realize or, if

they did realize it, elected not to apply such pressures. America was essential to the Allies as a base of supply, and any risk taken by these Powers which might have irreparably damaged a peaceful relationship with the United States was a calculated one.

The absence of forceful economic pressures by officials in Washington may be explained in part by the fact that such action would have seriously curtailed a highly lucrative trade with Great Britain in particular and the Allies in general. Commercial interests in the United States were not prepared to admit to such pressures at the expense of corporate profits. Trade with the Entente Powers was far better than no trade at all.

The notes between the State Department and the Foreign Office concerning contraband and blockade were prodigious in number. What is equally important is that they were also long and exhaustive. The length and detail of the messages were not by accident but by design. Short notes create short tempers and short tempers are dangerous.

The problem for the United States was to prepare diplomatic representations in such a manner as to respond to public protests of British actions, when they arose, and, at the same time, to deliberately prolong the legal disputes. Lansing, in his War Memoirs, recalled his intention writing in part:

I did all that I could to prolong the disputes by preparing, or having prepared, long and detailed replies, and introducing technical and controversial matters in the hope that before the extended interchange of arguments came to an end something would happen to change the current of American public opinion or to make the American people perceive that German absolutism was a menace to their liberties and to democratic institutions

everywhere. Fortunately this hope and effort were not in vain.²

The United States during the first year and a half of the War refrained from the formulation of a well-defined, inclusive policy regarding the controversies with Great Britain over neutral rights. Bryan, Lansing, and the others, all adopted the practice of making representations concerning individual cases. The course followed by the United States, however, does take shape and meaning when viewed in proper perspective. It was the planned and deliberate purpose of the Wilson Administration to extend the controversies as long as possible through a labyrinth of technical and detailed juridical review.³ The United States relied upon legal arguments within the framework of accepted international law in its attempts to resolve every commercial dispute with Great Britain. This policy when examined relative to its end becomes at once well-defined, or, at least in part well-defined.

The United States policy to maintain a peaceful Anglo-American relationship by prolonged, verbose representations was of singular importance and can hardly be over-emphasized. Whatever the other forces operative at the time the program proved successful. The generally pro-Ally sympathy of the American public and inane German blunders complemented it, or perhaps permitted it. Highly irritating British practices were always mitigated by these factors.

²Lansing, op. cit., II, 112.

³Ibid., p. 128.

The officials responsible for formulating United States policy by the close of 1915, became convinced that if America entered the War it would have to against Germany. Many considered German friendship a thing of the past.

The future possibility of the United States militarily opposed to the Central Powers points up another reason for Lansing's failure to present his case too strongly to Great Britain. He feared the United States would be forced to pursue the same policies the British pursued with regard to neutral rights in which event America would be placed before the world as hypocritical at worst or inconsistent at best. Relative to Lansing's desire to continue the controversies in light of any future actions the United States might be forced to take, the Secretary of State stated in part:

Everything was submerged in verbosity. It insured continuance of the controversies and left the questions unsettled, which was necessary in order to leave this country free to act and even act illegally when it entered the war.⁴

This thesis concludes with the beginning to the year 1916. The controversy with Great Britain concerning neutral rights continued and, in some instances, worsened during the remaining period of American neutrality. Whatever crises occurred, however, they also passed and the United States eventually entered the War against Germany and her allies. The policy adopted by the United States in forming lengthy, technical, legal notes had been set during the first year and a half of World War I,

⁴
Ibid., p. 128,

and that policy extended the diplomatic exchanges with Great Britain until America's armed intervention in concert with the Allies.

The Anglo-American controversy over neutral rights and especially that of contraband and blockade did not win a single major concession for the United States. It is possible, and perhaps even probable, that Lansing never fully believed that legal representations would accomplish specific redressment of British policies. The representations were, however, successful for by them and under such design they insured a continuance of peaceful Anglo-American relations as was the ultimate intent.

It may well be said that the period encompassing the First World War is fretted with as many "if" problems as any four year span in history. "If" questions, however, have no place in the writing of history. They serve, if they are of service at all, as conservation pieces solely for academic speculation. It is a fruitless pursuit to substitute a set of abstract actions for those which in reality occurred. The historian's task is to record events as they happened and to place them in their proper perspective through logical interpretation.

B I B L I O G R A P H Y

PUBLIC DOCUMENTS

Hansard. The Parliamentary Debates, House of Commons, 70. London: His Majesty's Stationery Office, 1915.

Cd. 8225. Miscellaneous No. 11 (1916), Correspondence with the United States Ambassador Respecting Trading with the Enemy (Extension of Powers) Act, 1915. London: His Majesty's Stationery Office, 1916.

United States Congress, Senate, 64th Congress, 1st Session, Congressional Record, 53, part 2. Washington: Government Printing Office, 1916.

_____. House, 64th Congress, 1st Session, Congressional Record, 53, parts 1-13, Appendix. Washington: Government Printing Office, 1914.

_____. Senate, 63d Congress, 2d Session, Congressional Record, 51, part 16. Washington: Government Printing Office, 1914.

_____. House, 64th Congress, 1st Session, The Problems of Neutrality When the World Is at War (by S.D. Fess), House Document 2111, parts 1 and 2. Washington: Government Printing Office, 1917.

United States Department of State, European War Nos. 2 and 4: Diplomatic Correspondence with Belligerent Governments Relating to Neutral Rights and Duties. Washington: Government Printing Office, 1915, 1916.

_____. Papers Relating to the Foreign Relations of the United States, (Supplements, 1914-1918), 9 vols. (The Lansing Papers, 1914-1920), 2 vols. Washington: Government Printing Office, 1928-1934, 1939. (Year of publication listed in the order cited).

LEGAL PUBLICATIONS

50 Law Journal (1915).

Law Reports Probate Division (1915).

113 Law Times Reports (September, 1915--February, 1916).

BOOKS

Bentwich, Norman. The Declaration of London. London: Effingham Wilson, 1911.

This work contains the provisions of the Declaration of London with informative commentary by an English author. An excellent reference.

Bernstorff, Count Johann H. A. H. A. von. My Three Years in America. New York: Charles Scribner and Sons, 1920.

A book of importance by the German Ambassador to the United States until its entry into the War. In addition to diplomatic review, the work reveals the many facets of the highly capable German.

Colombos, C. John. A Treatise on the Law of Prize. London: Sweet and Maxwell Limited, 1926.

A valuable study on the law of prize with especial regard to prize law extension occasioned by World War I.

Garner, James Wilford. International Law and the World War. 2 vols. London: Longman, Green and Company, 1920.

An excellent and important contribution to the problems concerning international law and the First World War. It is a systematic examination of legal questions and principles of international law involved in the conflict. A multitude of cases are cited and many are treated in detail. An authoritative reference.

George, David Lloyd. War Memoirs of David Lloyd George 1914-1918. 8 vols. Boston: Little Brown and Company, 1933-1937.

The former Prime Minister recalls the days of the Great War. The complete work contains cabinet papers and excellent general background in addition to chapters dealing with Anglo-American problems.

Gerard, James W. My Four Years in Germany. New York: George H. Doran Company, 1917.

The former United States Ambassador at Berlin relates the events and diplomatic exchanges occurring between America and Germany during the years 1914-1916.

_____. My First Eighty-three Years in America. Garden City, N.Y.: Doubleday and Company, Inc., 1951.

Although the work covers a large span of years, it does contain, to a limited extent, facets of Gerard's diplomatic relationship with the German Foreign Ministry.

Graham, Malbone Watson Jr. The Controversy Between the United States and the Allied Governments Respecting Neutral Rights and Commerce During the Period of American Neutrality, 1914-1917. University of Texas Bulletin, No. 2344. Austin: University of Texas Press, 1923.

A small but exceedingly well prepared work dealing with the diplomatic entanglements created by the belligerents' disregard of neutral rights within the framework of international law. The bulletin is divided according to individual problems and contains excellent chapters on the problems of contraband and blockade. It is an extremely useful aid.

Grey, Viscount. Twenty-Five Years. 2 vols. New York: Frederick A. Stokes Company, 1925.

This work, by Grey himself, is of first importance. The former Foreign Secretary recalls and discusses those world-shaping events in which he so convincingly played his part.

_____. Valley of Fenners. New York: Houghton Mifflin Company, 1926.

A small book offering Grey's thoughts on a variety of subjects. Useful for an insight into his make-up and personality.

_____. Recreation. New York: Houghton Mifflin Company, 1920.

An address in book form delivered before the Harvard Union on December 8, 1919, presenting, for the most part, Grey's opinions on world affairs--for personal background.

Guichard, Louis. The Naval Blockade, 1914-1918. Trans. Christopher R. Turner. New York: D. Appleton and Company, 1930.

A study, by a French author, of the blockade with emphasis on economic considerations. It is still the best work in its field.

Gwynn, Stephen (ed.). The Letters and Friendships of Sir Cecil Spring-Rice. 2 vols. Cambridge, Mass: The Riverside Press, 1929.

This work is a compilation of the correspondence of the British Ambassador to the United States during the First World War. The second volume is of primary importance to this thesis. It sheds much light upon all phases of Anglo-American relations.

Hendrick, Euton J. (ed.). The Life and Letters of Walter H. Page. 3 vols. New York: Doubleday, Page and Company, 1925.

Hendricks has taken the most important correspondence of the former United States Ambassador to Great Britain and compiled it into three volumes. They contain valuable information concerning the work accomplished at the London end of the cable.

Kenworthy, J. M. and George Young. Freedom of the Seas. New York: Horace Liveright, 1928.

A first-rate study of various aspects of the belligerent-neutral commercial relationship and its history during the War. The authors give excellent treatment to the blockade question and its effects upon both sides. A very valuable contribution.

Lansing, Robert. War Memoirs of Robert Lansing. New York: Bobbs-Merill Company, 1935.

The former Secretary of State records his thoughts concerning the problems faced and the policies implemented by the United States during World War I. A highly useful book to this thesis.

Lutz, Herman. Lord Grey and the World War. Trans. E. W. Dickes. New York: Alfred A. Knopf, 1928.

A work of little importance to this thesis, but retains some value as background material.

May, Ernest R. The World War and American Isolation 1914-1917. Cambridge, Mass.: Harvard University Press, 1959.

A recent book by a Harvard historian who uses well both old and new historical discoveries dealing with the period 1914-1917. The author has accomplished a fine job in producing a readable, informative history containing an excellent bibliography.

Millis, Walter. Road to War America 1914-1917. Cambridge, Mass.: The Riverside Press, 1935.

The work was of little value to this thesis. It is devoted, to a large extent, to a criticism of the American acceptance of the Entente case. Except, perhaps, for an occasional reference it may serve as additional background.

Morrissey, Alice M. The American Defense of Neutral Rights 1914-1917. Cambridge, Mass.: The Riverside Press, 1939.

An interesting account of American policy from 1914-1917 with attention given to the legal questions involved and the forces that shaped the defense of neutral rights. It is well written and contains valuable chapters dealing with Anglo-American controversies.

Oppenheim, L. International Law. 2 vols. Second edition. London: Longmans, Green and Company, 1912.

A respected work by a renown international jurist. The text clearly and concisely discusses the principles of international law. The author deals extensively with contraband and blockade in volume II. A classic effort.

Parmelee, Maurice. Blockade and Sea Power. New York: Thomas Y. Crowell Company, 1924.

The book is a comprehensive survey of the important features of the blockade and the United States including the effect of the Allied blockade as a whole. However, much of it treats the measure relative to the last years of the War.

Paxson, Frederic L. American Democracy and the World War. 2 vols. Cambridge, Mass.: The Riverside Press, 1936, 1939.

This work is divided into two volumes, the first being Pre-War Years 1913-1917, and the second America at War 1917-1918. The second considers a time period without the scope of this thesis. The first, however, examines the stresses of war on a large neutral democracy--the United States. The book contains rewarding sections exploring the Anglo-American controversy over neutral rights.

Petersen, H. C. Propaganda for War--The Campaign against American Neutrality 1914-1917. Norman: University of Oklahoma Press, 1939.

This work examines the development of British propaganda in the United States during the period of American neutrality. Economics influences as propaganda effect are also treated. The author submits that American armed intervention into World War I was the end product of British propaganda.

Pyke, H. Reason. The Law of Contraband of War. Oxford: The Clarendon Press, 1915.

The author deals with contraband in international law generally, including a brief but interesting history of the term and its treatment as a class of goods. The work also offers a discussion of contraband related to judicial opinions and decisions in the early stages of the War.

Scott, James Brown (ed.). The Declaration of London February 26, 1909. New York: Oxford University Press, 1919.

As the title implies the book is a compilation of the official papers and documents pertaining to the Naval Conference at London in 1908-1909. It includes the complete instrument known as the Declaration of London as adopted by the participating nations with definitive commentary by the editor.

Seymour, Charles. American Diplomacy During the World War. Baltimore: The Johns Hopkins Press, 1934.

A classic work by the former Sterling Professor of History at Yale University in which all phases of the diplomacy of the period are treated. A very readable and illuminating diplomatic history of the times. An essential reference for students of the period.

_____. American Neutrality 1914-1917. New Haven: Yale University Press, 1935.

A smaller and less formidable attempt to unravel the causes of American intervention in the First World War than his American Diplomacy During the World War, but nonetheless important. The work contains a valuable chapter on the influence of trade with Allies on American diplomacy.

_____. The Intimate Papers of Colonel House. 4 vols. New York: Houghton Mifflin Company, 1926.

A fragmentary compilation of the collection of House's personal papers. The complete file is at the Yale University Library. Although not complete, it would be impossible to justly do a paper of this type without consulting these volumes.

_____. The Allied Blockade of Germany 1914-1916. Ann Arbor: The University of Michigan Press, 1957.

An excellent work concerning various aspects of the blockade with especial attention given to a detailed study of the negotiations between the Allies and the northern European neutrals for trade agreements.

Slater, J. A. Allied Shipping Control. Vol. XII of the Economic and Social History of the World War--British Series. Edited by James T. Shotwell. 24 vols. Oxford: The Clarendon Press, 1920-1934.

This book describes the economic system of Great Britain under official controls. In particular, it is concerned with the Allied Maritime Transport Council in the administration of controls. The volume also contains limited background on such measures as blockade, the rationing system, and other aspects of controls affecting neutrals.

Transil, Charles Callan. America Goes to War. Boston: Little, Brown and Company, 1938.

A long and exhaustive account of the important questions concerning foreign policy confronted by the Wilson Administration during the 1914-1917 period. It provides specific information pertaining to problems of contraband and blockade, but of greater benefit is its use as a background study.

Trevelyan, George M. Grey of Fallodon. Cambridge, Mass.: The Riverside Press, 1937.

The essential study of the former Foreign Secretary by one of England's great modern historians. It is both an insight into Grey the man and the history of the times.

PERIODICALS

Bailey, Thomas A. "German Documents Relating to the 'Lusitania'," Journal of Modern History, VIII (1936), 320-337.

In this article, two German documents relating to the Lusitania are reproduced in the original with an English translation of the more important passages. The first document contains a copy of the general orders issued to the submarine that destroyed the Lusitania. The second document is an excerpt from the diary of the submarine's commander.

_____. "World War Analogues of the Trent Affair," The American Historical Review, XXXVIII (October, 1932-July, 1933), 286-290.

The article is not directly important to the thesis as such. However, it is interesting as a background study of the numerous controversies over neutral rights with the Allied Powers.

_____. "The United States and the Blacklist During the Great War," Journal of Modern History, VI (March-December, 1934), 14-35.

The writer explores the effect and history of the blacklisting of certain American firms by Great Britain as one measure in the attempt to curtail trade with the Central Powers. A valuable contribution to the blacklisting controversy.

Bushnell, Albert Hart. "Nations' vs. Belligerents' Laws," New York Times Magazine, (March 21, 1915), 3-8.

An eminent scholar discusses British use and misuse of International law.

Lippmann, Walter. "The Intimate Papers of Colonel House," Foreign Affairs Quarterly, IV, Nos. 1-4 (October, 1925-July, 1926), 383-393.

Lippmann discusses the role of Colonel House and the power of his influence in light of House's limited successes and failures.

Phillips, Ethel C. "American Participation in Belligerent Commercial Controls, 1914-1917," American Journal of International Law, 27 (1933), 675-693.

A history of the Allied attempt to have various American industries participate in their commercial control programs. It offers a clear picture of the extent to which American industry was so organized.

Pyke, H. Reason. "The Kim Case," The Law Quarterly Review, XXXII (1916), 50-69.

An eminent authority on international law discusses the Kim Case—its background, trial history and the significance of the final decision.

Trimble, E. G. "Violations of Maritime Law by Allied Powers During The World War," American Journal of International Law, 24 (1930), 79-99.

This is an examination of the various and often flagrant violations of international law respecting neutral rights and commerce by the Entente Powers during the First World War. Specific cases are included with regard to general principles violated.

Van Alstyne, Richard W. "The Policy of the United States Regarding the Declaration of London at the Outbreak of the Great War," Journal of Modern History, VII (1935), 434-447.

This article concerns the abortive attempt by the United States to secure the Declaration of London as a standard of guidance by both sides during the War. The author points up Lansing's desire to have a definite limit imposed upon the number of articles which Great Britain could rightly declare contraband.

Warren, Charles. "Troubles of a Neutral," Foreign Affairs Quarterly, XII, Nos. 1-4 (October, 1933-July, 1934), 375-394.

The author discusses the problems confronted by neutrals in time of war, with reference to those encountered by the United States during World War I.

NEWSPAPERS

The New York Times, September, 1914-December, 1916.

The [London] Times, August, 1914-December, 1916.

APPENDICES

APPENDIX A

LIST OF IMPORTANT PERSONAGES

| <u>NAME</u> | <u>POSITION AT TIME OF REFERENCE</u> |
|---------------------------------|---------------------------------------------------------------------------------------------|
| Asquith, Herbert Henry | British Prime Minister. |
| Bernstorff, Count Johann von | German Ambassador to the United States. |
| Bryan, William Jennings | Secretary of State from the outbreak of the War until June 1915. |
| Evans, Sir Samuel | President of the Prize Court. Presiding judge in the <u>Kim</u> Case. |
| Gerard, James W. | United States Ambassador to Germany. |
| Grey, Sir Edward | British Foreign Secretary. |
| House, Colonel (Edward Mandell) | Advisor to Woodrow Wilson. |
| Lansing, Robert | Counsel for the State Department until his appointment as Secretary of State in July, 1915. |
| Page, Walter Hines | United States Ambassador to Great Britain. |
| Skinner, Robert P. | United States Consul General at London. |
| Spring-Rice, Sir Cecil | British Ambassador to the United States. |
| Wilson, Woodrow | President of the United States. |

APPENDIX B

TWENTY-TWO SELECTED ARTICLES OF THE
DECLARATION OF LONDON¹

ARTICLE 22

The following articles may, without notice, be treated as contraband of war, under the name of absolute contraband:

- (1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.
- (2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.
- (3) Powder and explosives specially prepared for use in war.
- (4) Gun-mountings, limber boxes, limber, military wagons, field forges, and their distinctive component parts.
- (5) Clothing and equipment of a distinctively military character.
- (6) All kinds of harness of a distinctively military character.
- (7) Saddle, draught, and pack animals suitable for use in war.
- (8) Articles of camp equipment, and their distinctive component parts.
- (9) Armor Plates.
- (10) War-ships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.
- (11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

ARTICLE 23

Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

ARTICLE 24

The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as

¹Brown, *op. cit.*, pp. 117-22. (All Articles taken from this work).

contraband of war, under the name of conditional contraband:

- (1) Foodstuffs.
- (2) Forage and grain, suitable for feeding animals.
- (3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.
- (4) Gold and Silver in coin or bullion; paper money.
- (5) Vehicles of all kinds available for use in war, and their component parts.
- (6) Vessels, craft, and boats of all kinds; floating docks, and their component parts.
- (7) Railway material, both fixed and rolling stock, and material for telegraphs, wireless telegraphs, and telephones.
- (8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.
- (9) Fuel; lubricants.
- (10) Powder and explosives not specially prepared for use in war.
- (11) Barbed wire and implements for fixing and cutting the same.
- (12) Horseshoes and shoeing materials.
- (13) Harness and saddlery.
- (14) Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

ARTICLE 25

Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

ARTICLE 26

If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Article 22 and 24, such intention shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

ARTICLE 27

Articles which are not susceptible of use in war may not be declared contraband of war.

ARTICLE 28

The following may not be declared contraband of war:

- (1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials.

- (2) Oil seeds and nuts; copra.
- (3) Rubber, resins, gums, and lacs; hops.
- (4) Raw hides and horns, bones and ivory.
- (5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
- (6) Metallic ores.
- (7) Earths, clays, lime, chalk, stone, including marble, bricks, slates and tiles.
- (8) Chinaware and glass.
- (9) Paper and paper-making materials.
- (10) Soap, paint and colors including articles exclusively used in their manufacture, and varnish.
- (11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.
- (12) Agricultural, mining, textile, and printing machinery.
- (13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral.
- (14) Clocks and watches other than chronometers.
- (15) Fashion and fancy goods.
- (16) Feathers of all kinds, hairs and bristles.
- (17) Articles of household furniture and decoration; office furniture and requisites.

ARTICLE 29

Likewise the following may be treated as contraband of war:

- (1) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation be requisitioned, if their destination is that specified in Article 30.
- (2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

ARTICLE 30

Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transshipment or a subsequent transport by land.

ARTICLE 31

Proof of the destination specified in Article 30 is complete in the following cases:

- (1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.
- (2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

ARTICLE 32

Where a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers and unable to give adequate reasons to justify such deviation.

ARTICLE 33

Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the goods can not in fact be used for the purpose of the war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).

ARTICLE 34

The destination referred to in Article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband.

In cases where the above presumptions do not arise, the destination is presumed to be innocent.

The presumptions set up by this article may be rebutted.

ARTICLE 35

Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

The ships papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

ARTICLE 36

Notwithstanding the provisions of Article 35, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture in cases where the enemy country has no seaboard.

ARTICLE 37

A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination.

ARTICLE 38

A vessel may not be captured on the ground that she has carried contraband on previous occasions of such carriage is in point of fact at an end.

ARTICLE 39

Contraband goods are liable to condemnation.

ARTICLE 40

A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

ARTICLE 41

If a vessel carrying contraband is released, she may be condemned to pay costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ships and cargo during the proceedings.

ARTICLE 43

If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband can not be condemned except on payment of compensation; the vessel herself and the remainder of the cargoes are not liable to condemnation or to the costs and expenses referred to in Article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

A vessel deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs of the hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

ARTICLE 44

A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent war-ship.

The delivery of the contraband must be entered by the captor on the log-book of the vessel stopped and the master must give the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

APPENDIX C

SELECTED ORDERS IN COUNCIL AND CONTRABAND PROCLAMATIONS

THE ORDER IN COUNCIL ADOPTING THE PROVISIONS OF
THE DECLARATION OF LONDON

- (1) ORDER IN COUNCIL ADOPTING DURING THE PRESENT HOSTILITIES THE PROVISIONS OF THE CONVENTION KNOWN AS THE 'DECLARATION OF LONDON' WITH ADDITIONS AND MODIFICATIONS (STATUTORY RULES AND ORDERS, 1914, No. 1260).

At the Court at Buckingham Palace, the 20th day of August,
1914.

PRESENT,

The King's Most Excellent Majesty in Council.

Whereas during the present hostilities the Naval Forces of His Majesty will co-operate with the French and Russian Naval Forces, and

Whereas it is desirable that the naval operations of the allied forces so far as they affect neutral ships and commerce should be conducted on similar principles, and

Whereas the Governments of France and Russia have informed His Majesty's Government that during the present hostilities it is their intention to act in accordance with the provisions of the Convention known as the Declaration of London, signed on the 26th day of February, 1909, so far as may be practicable.

Now, therefore, His Majesty, by and with the advice of His Privy Council, is pleased to order, and it is hereby ordered, that during the present hostilities the Convention known as the Declaration of London shall, subject to the following additions and modifications, be adopted and put in force by His Majesty's Government as if the same had been ratified by His Majesty:-

The additions and modifications are as follows:-

1. The lists of absolute and conditional contraband contained in the Proclamation dated August 4th, 1914, shall be substituted for the lists contained in Articles 22 and 24 of the said Declaration.
2. A neutral vessel which succeeded in carrying contraband to the enemy with false papers may be detained for having carried such contraband if she is encountered before she has completed her return voyage.

3. The destined referred to in Article 33 may be inferred from any sufficient evidence, and (in addition to the presumption laid down in Article 34) shall be presumed to exist if the goods are consigned to or for an agent of the Enemy State or to or for a merchant or other person under the control of the authorities of the Enemy State.

4. The existence of a blockade shall be presumed to be known:-

- (a) to all ships which sailed from or touched at an enemy port a sufficient time after the notification of the blockade to the local authorities to have enabled the enemy Government to make known the existence of the blockade,
- (b) to all ships which sailed from or touched at a British or allied port after the publication of the declaration of blockade.

5. Notwithstanding the provisions of Article 35 of the said Declaration, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture to whatever port the cargo is to be discharged.

6. The General Report of the Drafting Committee on the said Declaration presented to the Naval Conference and adopted by the Conference at the eleventh plenary meeting on February 25th, 1909, shall be considered by all Prize Courts as an authoritative statement of the meaning and intention of the said Declaration, and such Courts shall construe and interpret the provisions of the said Declaration by the light of the commentary given therein.

And the Lords Commissioners of His Majesty's Treasury, the Lords Commissioners of the Admiralty, and each of His Majesty's Principal Secretaries of State, the President of the Probate, Divorce and Admiralty Division of the High Court of Justice, all other Judges of His Majesty's Prize Courts, and all Governors, Officers and Authorities whom it may concern, are to give the necessary directions herein as to them may respectively appertain.

Almeric FitzRoy¹

¹Pyke, The Law of Contraband of War, pp. 282-83.

THE DECLARATION OF LONDON ORDER IN COUNCIL, NO. 2, 1914
(STATUTORY RULES AND ORDERS, 1914, NO. 1614).

At the Court of Buckingham Palace, the 29th day of October,
1914.

PRESENT,

The King's Most Excellent Majesty in Council.

Whereas by an Order in Council dated the 20th day of August, 1914, His Majesty was pleased to declare that during the present hostilities the Convention known as the Declaration of London should, subject to certain additions and modifications therein specified, be adopted and put in force by His Majesty's Government; and

Whereas the said additions and modifications were rendered necessary by the special conditions of the present war; and

Whereas it is desirable and possible now to re-enact the said Order in Council with amendments in order to minimize, so far as possible, the interference with innocent neutral trade occasioned by the war;

Now, therefore, His Majesty, by and with the advice of His Privy Council, is pleased to order, and it is hereby ordered, as follows:-

1. During the present hostilities the provisions of the Convention known as the Declaration of London shall, subject to the exclusion of the lists of contraband and non-contraband, and to the modifications hereinafter set out, be adopted and put in force by His Majesty's Government.

The modifications are as follows:-

- (i) A neutral vessel, with papers indicating a neutral destination, which, notwithstanding the destination shown on the papers, proceeds to an enemy port, shall be liable to capture and condemnation if she is encountered before the end of her next voyage.
- (ii) The destination referred to in Article 33 of the said Declaration shall (in addition to the presumptions laid down in Article 34) be presumed to exist if the goods are consigned to or for an agent of the enemy State.
- (iii) Notwithstanding the provisions of Article 35 of the said Declaration, conditional contraband shall be liable to capture on board a vessel bound for a neutral port if the goods are consigned "to order," or if the ship's papers do not show who is the consignee of the goods or if they show a consignee of the goods in territory belonging to or occupied by the enemy.
- (iv) In the cases covered by the preceding paragraph (iii) it shall lie upon the owners of the goods to prove that their destination was innocent.

2. Where it is shown to the satisfaction of one of His Majesty's Principal Secretaries of State that the enemy Government is drawing supplies for its armed forces from or through a neutral country, Article 35 of the said Declaration apply. Such direction shall be notified in the London Gazette and shall operate until the same is withdrawn. So long as such direction is in force, a vessel which is carrying conditional contraband to a port in that country shall not be immune from capture.

3. The Order in Council of the 20th August, 1914, directing the adopting and enforcement during the present hostilities of the Convention known as the Declaration of London, subject to the additions and modifications therein specified, is hereby repealed.

4. This Order may be cited as 'the Declaration of London Order in Council, No. 2, 1914'.

And the Lords Commissioners of His Majesty's Treasury, the Lords Commissioners of the Admiralty, and each of His Majesty's Principal Secretaries of State, the President of the Probate, Divorce, and Admiralty Division of the High Court of Justice, and all other Judges of His Majesty's Prize Courts, and all Governors, Officers, and Authorities whom it may concern, are to give the necessary directions herein as to them may respectively appertain.

Almeric FitzRoy²

²Ibid., pp. 284-85.

ORDER IN COUNCIL OF MARCH 11, 1915
(REPRISAL ORDER)

Whereas the German Government has issued certain orders which, in violation of the usages of war, purport to declare the waters surrounding the United Kingdom a military area, in which all British and allied merchant vessels will be destroyed irrespective of the safety of the lives of passengers and crew, and in which neutral shipping will be exposed to similar danger in view of the uncertainties of naval warfare; and

Whereas in a memorandum accompanying the said orders neutrals are warned against entrusting crews, passengers, or goods to British or allied ships; and

Whereas such attempts on the part of the enemy give to His Majesty an unquestionable right of retaliation; and

Whereas His Majesty has therefore decided to adopt further measures in order to prevent commodities of any kind from reaching or leaving Germany, though such measures will be enforced without risk to neutral ships or non-combatant life and in strict observance of the dictates of humanity; and

Whereas the Allies of His Majesty are associated with him in the steps now to be announced for restricting further the commerce of Germany.

His Majesty is therefore pleased, by and with the advice of his Privy Council, to order and it is hereby ordered as follows:

1. No merchant vessel which sailed from her port of departure after the 1st March 1915 shall be allowed to proceed on her voyage to any German port.

Unless the vessel receives a pass enabling her to proceed to some neutral or allied port to be named in the pass, goods on board any such vessel must be discharged in a British port and placed in the custody of the marshal of the Prize Court. Goods so discharged, not requisitioned for the use of His Majesty, be restored by order of the Court, upon such terms as the Court may in the circumstances deem to be just, to the person entitled thereto.

2. No merchant vessel which sailed from any German port after the 1st March 1915 shall be allowed to proceed on her voyage with any goods on board laden at such port.

All goods laden at such port must be discharged in a British port shall be placed in the custody of the marshal of the Prize Court, and, if not requisitioned for the use of His Majesty, shall be detained or sold under the direction of the Prize Court. The proceeds of goods sold shall be paid into Court may in the circumstances deem to be just.

Provided, that no proceeds of the sale of such goods shall be paid out of the Court until the conclusion of peace, except on the application of the proper officer of the Crown, unless it be

shown that the goods had become neutral property before the issue of this Order.

Provided also, that nothing herein shall prevent the release of neutral property laden at such enemy port on the application of the proper officer of the Crown.

3. Every merchant vessel which sailed from her port of departure after the 1st March 1915 on her way to a port other than a German port, carrying goods with enemy destination or which are enemy property, may be required to discharge such goods in a British or allied port. Any goods so discharged in a British port shall be placed in the custody of the marshal of the Prize Court, and, unless they are contraband of war, shall, if not requisitioned for the use of His Majesty, be restored by order of the Court, upon such terms as the Court may in the circumstances deem to be just to the person entitled thereto.

Provided, that this Article shall not apply to any case falling within Articles 2 or 4 of this Order.

4. Every merchant vessel which sailed from a port other than a German port after the 1st March 1915 having on board goods which are of enemy origin or are property may be required to discharge such goods in a British or allied port. Goods so discharged in a British port shall be placed in the custody of the marshal of the Prize Court, and if not requisitioned for the use of His Majesty, shall be detained or sold under the direction of the Prize Court. The proceeds of goods so sold shall be paid into Court and dealt with in such manner as the Court may in the circumstances deem to be just.

Provided, that no proceeds of sale of such goods be paid out of Court until the conclusion of peace except on the application of the proper officer of the Crown, unless it be shown that the goods had become neutral property before the issue of this order.

Provided also, that nothing herein shall prevent the release of neutral property of enemy origin on the application of the proper officer of the Crown.

5. Any person claiming to be interested in, or to have any claim in respect of any goods (not being contraband of war) placed in the custody of the marshal of the Prize Court under this order, or in the proceeds of such goods, may forthwith issue a writ in the Prize Court against the proper officer of the Crown and apply for an order that the goods should be restored to him, or that their proceeds should be paid to him, or for such other order as the circumstances of the case require.

The practice and procedure of the Prize Court shall, so far as applicable, be followed mutatis mutandis in any proceedings consequential upon this Order.

6. A merchant vessel which has cleared for a neutral port from a British or allied port, or which has been allowed to pass having an ostensible destination to a neutral port, and proceeds to an enemy port, shall, if captured on any subsequent voyage, be liable to condemnation.

7. Nothing in this Order shall be deemed to affect the liability of any vessel or goods to capture or condemnation independently of this Order.

8. Nothing in this Order shall prevent the relaxation of the provisions of this Order in respect of the merchant vessels of any country which declares that no commerce intended for or originating in Germany or belonging to German subjects shall enjoy the protection of its flag.³

³For. Rel., U.S., 1915, Suppl., pp. 143-145.

THE CONTRABAND PROCLAMATIONS

(1) PROCLAMATION, DATED AUGUST 4, 1914, SPECIFYING THE ARTICLES TO BE TREATED AS CONTRABAND OF WAR (STATUTORY RULES AND ORDERS, 1914, NO. 1250).

BY THE KING.

A Proclamation specifying the Articles to be treated as Contraband of War.

George R.I.

Whereas a state of War exists between US on the one hand and the German Empire on the other;

And whereas it is necessary to specify the Articles which it is Our intention to treat as Contraband of War:

Now, therefore, We do hereby Declare, by and with the advice of Our Privy Council, that during the continuance of the War or until we do give further public notice the articles enumerated in Schedule I hereto will be treated as absolute contraband, and the articles enumerated in Schedule II hereto will be treated as conditional contraband:-

Schedule I

The following articles will be treated as absolute contraband:-

1. Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.
2. Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.
3. Powder and explosives specially prepared for use in war.
4. Gun mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.
5. Clothing and equipment of a distinctively military character.
6. All kinds of harness of a distinctively military character.
7. Saddle, draught, and pack animals suitable for use in war.
8. Articles of camp equipment, and their distinctive component parts.
9. Armour plates.
10. Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.
11. Aeroplanes, airships, balloons, and aircraft of all kinds, and their component parts, together with accessories and articles recognizable as intended for use in connexion with balloons and aircraft.
12. Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land and sea.

Schedule II

The following articles will be treated as conditional contraband:-

1. Food-stuffs.
2. Forge and grain, suitable for feeding animals.
3. Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.
4. Gold and silver in coin or bullion; paper money.
5. Vehicles of all kinds available for use in war, and their component parts.
6. Vessels, craft and boats of all kinds; floating docks, parts of docks, and their component parts.
7. Railway material, both fixed and rolling stock, and materials for telegraphs, wireless telegraphs, and telephones.
8. Fuel; lubricants.
9. Powder and explosives not specially prepared for use in war.
10. Barbed wire, and implements for fixing and cutting the same.
11. Horse-shoes and shoeing materials.
12. Harness and saddlery.
13. Field-glasses, telescopes, chronometers, and all kinds of nautical instruments.

Given at Our Court at Buckingham Palace, this Fourth day of August, in the year of our Lord One thousand nine hundred and fourteen, and in the Fifth year of Our Reign.

God save the King.⁴

⁴Fyke, op. cit., pp. 286-87.

PROCLAMATION, DATED SEPTEMBER 21, 1914, SPECIFYING CERTAIN
ADDITIONAL ARTICLES TO BE TREATED AS CONTRABAND OF WAR
(STATUTORY RULES AND ORDERS, 1914, NO. 1410).

BY THE KING

A Proclamation specifying certain additional Articles which are
to be treated as Contraband of War.

George R.I.

Whereas on the fourth day of August last We did issue Our Royal Proclamation specifying the articles which it was Our intention to treat as Contraband of War during the War between Us and the German Emperor:

And whereas on the twelfth day of August last We did by Our Royal Proclamation of that date extend Our Proclamation aforementioned to the War between Us and the Emperor of Austria, King of Hungary:

And whereas by an Order in Council of the twentieth day of August, 1914, it was ordered that during the present hostilities the Convention known as the Declaration of London should, subject to certain additions and modifications therein specified, be adopted and put in force as if the same had been ratified by Us:

And whereas it is desirable to add to the list of articles to be treated as Contraband of War during the present War:

And whereas it is expedient to introduce certain further modifications in the Declaration of London as adopted and put in force:

Now therefore, We do hereby Declare, by and with the advice of Our Privy Council, that during the continuance of the War, or until We do give further public notice, the articles enumerated in the Schedule hereto will, notwithstanding anything contained in Article 28 of the Declaration of London, be treated as conditional Contraband.

Schedule.

| | |
|----------------------------|---------------------------|
| Copper, unwrought. | Magnetic Iron Ore |
| Lead, pig, sheet, or pipe. | Rubber |
| Glycérine. | Hides and Skins, raw or |
| Ferrochrome. | rough tanned (but not in- |
| Haematite Iron Ore. | cluding dressed leather). |

Given at Our Court at Buckingham Palace, this Twenty-first day of September, in the year of our Lord one thousand nine hundred and fourteen, and in the Fifth year of Our Reign.

God save the King.⁵

⁵Ibid., pp. 287-88.

PROCLAMATION, DATED OCTOBER 29, 1914, REVISING THE LIST OF CONTRABAND OF WAR (STATUTORY RULES AND ORDERS, 1914, NO. 1613).

BY THE KING.

A Proclamation Revising the List of Contraband of War.

George R.I.

Whereas on the fourth day of August, 1914, We did issue Our Royal Proclamation specifying the articles which it was Our intention to treat as contraband of war during the war between Us and the German Emperor; and

Whereas on the twelfth day of August, 1914, We did by Our Royal Proclamation of that date extend Our Proclamation aforementioned to the war between Us and the Emperor of Austria, King of Hungary; and

Whereas it is expedient to consolidate the said lists and to make certain additions thereto:

Now, therefore, We do hereby declare, by and with the advice of Our Privy Council, that the lists of contraband contained in the schedules to Our Royal Proclamations of the fourth day of August and the twenty-first day of September aforementioned are hereby withdrawn, and that in lieu thereof during the continuance of the war or until We do give further public notice the articles enumerated in Schedule I hereto will be treated as absolute contraband, and the articles enumerated in Schedule II hereto will be treated as conditional contraband.

Schedule I

1. Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.
2. Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.
3. Powder and explosives specially prepared for use in war.
4. Sulphuric acid.
5. Gun mountings, limber boxes, limbers, military wagons, field forges and their distinctive component parts.
6. Range-finders and their distinctive component parts.
7. Clothing and equipment of a distinctively military character.
8. Saddle, draught, and pack animals suitable for use in war.
9. All kinds of harness of a distinctively military character.
10. Articles of camp equipment and their distinctive component parts.
11. Armour plates.
12. Haematite iron ore and haematite pig iron.
13. Iron pyrites.
14. Nickel ore and nickel.

15. Ferrochrome and chrome ore.
16. Copper, unwrought.
17. Lead, pig, sheet, or pipe.
18. Aluminium.
19. Ferro-silica.
20. Barbed wire, and implements for fixing and cutting the same.
21. Warships, including boats and their distinctive component parts of such a nature that they can only be used on a vessel of war.
22. Aeroplanes, airships, balloons, and aircraft of all kinds, and their component parts, together with accessories and articles recognizable as intended for use in connexion with balloons and aircraft.
23. Motor vehicles of all kinds and their component parts.
24. Motor tyres; rubber.
25. Mineral oils and motor spirit, except lubricating oils.
26. Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land and sea.

Schedule II

1. Foodstuffs.
2. Forage and feeding stuffs for animals.
3. Clothing, fabrics for clothing, and boots and shoes suitable for use in war.
4. Gold and silver in coin or bullion; paper money.
5. Vehicles of all kinds, other than motor vehicles, available for use in war, and their component parts.
6. Vessels, craft, and boats of all kinds; floating docks, parts of docks, and their component parts.
7. Railway materials, both fixed and rolling stock, and materials for telegraphs, wireless telegraphs, and telephones.
8. Fuel, other than mineral oils. Lubricants.
9. Powder and explosives not specially prepared for use in war.
10. Sulphur.
11. Glycerine.
12. Horseshoes and shoeing materials.
13. Harness and saddlery.
14. Hides of all kinds, dry or wet; pigskins, raw or dressed; leather, undressed or dressed, suitable for saddlery, harness, or military boots.
15. Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

Given at Our Court at Buckingham Palace, this Twenty-ninth day of October, in the year of our Lord one thousand nine hundred and fourteen, and in the fifth year of Our Reign.

God save the King.⁶

⁶Ibid., pp. 288-90.

PROCLAMATION, DATED DECEMBER 23, 1914, REVISING THE LIST OF CONTRABAND OF WAR (STATUTORY RULES AND ORDERS, 1914, NO. 1775).

BY THE KING.

A Proclamation revising the List of Articles to be treated as Contraband of War.

George R.I.

Whereas on the fourth day of August, 1914, We did issue Our Royal Proclamation specifying the articles which it was Our intention to treat as contraband of war during the war between Us and the German Emperor; and

Whereas on the fourth day of August, 1914, We did by our Our Proclamation of that date extend Our Proclamation aforementioned to the war between Us and the Emperor of Austria, King of Hungary; and

Whereas on the twenty-first day of September, 1914, We did by Our Royal Proclamation of that date make certain additions to the list of articles to be treated as contraband of war; and

Whereas on the twenty-ninth day of October, 1914, We did by Our Royal Proclamation of that date withdraw the said lists of contraband, and substitute therefor the lists contained in the schedules to the said Proclamation; and

Whereas it is expedient to make certain alterations in and additions to the said lists:

Now, therefore, We do hereby declare, by and with the advice of Our Privy Council, that the lists of contraband contained in the schedules to Our Royal Proclamation of the twenty-ninth day of October aforementioned are hereby withdrawn, and that in lieu thereof during the continuance of the war or until We do give further public notice the articles enumerated in Schedule I hereto will be treated as absolute contraband, and the articles enumerated in Schedule II hereto will be treated as conditional contraband.

Schedule I

1. Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.
2. Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.
3. Powder and explosives specially prepared for use in war.
4. Ingredients of explosives, viz. nitric acid, sulphuric acid, glycerine, acetone, calcium acetate and all other metallic acetates, sulphur, potassium nitrate, the fractions of the distillation products of coal tar between benzol and cresol inclusive, aniline, methylaniline, dimethylaniline, ammonium perchlorate, sodium perchlorate, sodium chlorate, barium chlorate,

ammonium nitrate, cyanamide, potassium chlorate, calcium nitrate, mercury.

5. Resinous products, camphor, and turpentine (oil and spirit).
6. Gun mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.
7. Range-finders and their distinctive component parts.
8. Clothing and equipment of a distinctively military character.
9. Saddle, draught, and pack animals suitable for use in war.
10. All kinds of harness of a distinctively military character.
11. Articles of camp equipment and their distinctive component parts.
12. Armour plates.
13. Ferro alloys, including ferro-tungsten, ferro-molybdenum, ferro-manganese, ferro-vanadium, ferro-chrome.
14. The following metals:--Tungsten, molybdenum, vanadium, nickel, selenium, cobalt, haematite pig-iron, manganese.
15. The following ores:--Wolframite, scheelite, molybdenite, manganese ore, nickel ore, chrome ore, haematite iron ore, zinc ore, lead ore, bauxite.
16. Aluminium, alumina, and salts of aluminium.
17. Antimony, together with the sulphides and oxides of antimony.
18. Copper, unwrought and part wrought, and copper wire.
19. Lead, pig, sheet, or pipe.
20. Barbed wire, and implements for fixing and cutting the same.
21. Warships, including boats and their distinctive component parts of such a nature that they can only be used on a vessel of war.
22. Submarine sound signalling apparatus.
23. Aeroplanes, airships, balloons, and aircraft of all kinds, and their distinctive component parts, together with accessories and articles recognizable as intended for use in connexion with balloons and aircraft.
24. Motor vehicles of all kinds and their component parts.
25. Tyres for motor vehicles and for cycles, together with articles or materials especially adapted for use in the manufacture or repair of tyres.
26. Rubber (including raw, waste, and reclaimed rubber) and goods made wholly of rubber.
27. Iron pyrites.
28. Mineral oils and motor spirit, except lubricating oils.
29. Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land and sea.

Schedule II

1. Foodstuffs.
2. Forage and feeding stuffs for animals.
3. Clothing, fabrics for clothing, and boots and shoes suitable for use in war, and their component parts.
4. Gold and silver in coin or bullion; paper money.
5. Vehicles of all kinds, other than motor vehicles, available for use in war, and their component parts.
6. Vessels, craft, and boats of all kinds; floating docks, parts of docks, and their component parts.
7. Railway materials, both fixed and rolling stock, and materials for telegraphs, wireless telegraphs, and telephones.
8. Fuel, other than mineral oils. Lubricants.
9. Powder and explosives not specially prepared for use in war.
10. Horseshoes and shoeing materials.
11. Harness and saddlery.
12. Hides of all kinds, dry or wet; pigskins, raw or dressed; leather, undressed or dressed, suitable for saddlery, harness, or military boots.
13. Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

Given at Our Court at Buckingham Palace, this Twenty-third day of December, in the year of our Lord one thousand nine hundred and fourteen, and in the Fifth year of Our Reign.

God save the King.⁷

⁷ Ibid., pp. 290-93.

PROCLAMATION, DATED MARCH 11, 1915, SPECIFYING CERTAIN ADDITIONAL ARTICLES TO BE TREATED AS CONTRABAND OF WAR (STATUTORY RULES AND ORDERS, 1915, NO. 205).

BY THE KING.

A Proclamation adding to the List of Articles to be treated as Contraband of War.

George R.I.

Whereas on the twenty-third of December, 1914, We did issue Our Royal Proclamation specifying the articles which it was Our intention to treat as contraband during the continuance of hostilities or until We did give further public notice, and

Whereas it is expedient to make certain additions to the lists contained in the said Proclamation:

Now, therefore, We do hereby declare by and with the advice of Our Privy Council, that during the continuance of the war or until we do give further public notice the following articles will be treated as absolute contraband in addition to those set out in Our Royal Proclamation aforementioned:-

Raw wool, wool tops and noils and woolen and worsted yarns.

Tin, chloride of tin, tin ore.

Castor oil.

Paraffin wax.

Copper iodide.

Lubricants.

Hides of cattle, buffaloes, and horses; skins of calves, pigs, sheep, goats, and deer; leather, undressed or dressed, suitable for saddlery, harness, military boots, or military clothing.

Ammonia and its salts whether simple or compound; ammonia liquor; urea, aniline, and their components.

And We do hereby further declare that the following articles will be treated as conditional contraband in addition to those set out in Our Royal Proclamation aforementioned:-

Tanning substances of all kinds (including extracts for use in tanning).

And We do hereby further declare that the terms 'foodstuffs' and 'feeding stuffs for animals' in the list of conditional contraband contained in Our Royal Proclamation aforementioned shall be deemed to include oleaginous seeds, nuts and kernels; animal and vegetable oils and fats (other than linseed oil) suitable for use in the manufacture of margarine; and cakes and meals made from oleaginous seeds, nuts and kernels.

Given at Our Court at Buckingham Palace, this Eleventh day
of March, in the year of our Lord one thousand nine hun-
dred and fifteen, and in the Sixth year of Our Reign.

God save the King.⁸

⁸Ibid., pp. 293-94.

PROCLAMATION, DATED MAY 27, 1915, MAKING CERTAIN FURTHER ADDITIONS TO AND AMENDMENTS IN THE LIST OF ARTICLES TO BE TREATED AS CONTRABAND OF WAR (STATUTORY RULES AND ORDERS, 1915, NO. 507).

BY THE KING.

A Proclamation making certain further Additions to and Amendments in the list of Articles to be treated as Contraband of War.

George R.I.

Whereas on the twenty-third of December, 1914, We did issue Our Royal Proclamation specifying the articles which it was Our intention to treat as contraband during the continuance of hostilities or until We did give further public notice; and

Whereas on the eleventh day of March, 1915, We did by Our Royal Proclamation of that date make certain additions to the list of articles to be treated as contraband of war; and

Whereas it is expedient to make certain further additions to and amendments in the said list:

Now, therefore, We do hereby declare, by and with the advice of Our Privy Council, that during the continuance of the war, or until We do give further public notice, the following articles will be treated as absolute contraband in addition to those set out in Our Royal Proclamation aforementioned:-

Toluol, and mixtures of toluol, whether derived from coal-tar, petroleum, or any other source;

Lathes and other machines or machine-tools capable of being employed in the manufacture of munitions of war;

Maps and plans of any place within the territory of any belligerent, or within the area of military operations, on a scale of four miles to one inch or on any larger scale, and reproductions on any scale by photography or otherwise of such maps or plans.

And We do hereby further declare that item 4 of Schedule I of Our Royal Proclamation of the twenty-third day of December aforementioned shall be amended as from this date by the omission of the words 'and all other metallic acetates' after the words 'calcium acetate'.

And We do hereby further declare that in Our Royal Proclamation of the eleventh day of March aforementioned the words 'other than linseed oil' shall be deleted and that the following article will as from this date be treated as conditional contraband:-

Linseed oil.

Given at Our Court at Buckingham Palace, this Twenty-seventh day of May, in the year of our Lord one thousand nine hundred and fifteen, and in the Sixth year of Our Reign.

God save the King.⁹

⁹ Ibid., pp. 294-95.

PROCLAMATION, DATED AUGUST 20, 1915, SPECIFYING VARIOUS FORMS OF COTTON TO BE TREATED AS ABSOLUTE CONTRABAND (STATUTORY RULES AND ORDERS, 1915, NO. 801).

BY THE KING.

A Proclamation adding to the List of Articles to be treated as Contraband of war.

George R.I.

Whereas on the 23rd day of December, 1914, We did issue Our Royal Proclamation specifying the articles which it was Our intention to treat as contraband during the continuance of hostilities or until We did give further notice; and

Whereas on the 11th day of March and on the 27th day of May, 1915, We did, by Our Royal Proclamation of those dates, make certain additions to the list of articles to be treated as contraband of war; and

Whereas it is expedient to make certain further additions to the said lists:

Now, therefore, We do hereby declare, by and with the advice of Our Privy Council, that during the continuance of the war or until We do give further public notice, the following articles will be treated as absolute contraband in addition to those set out in Our Royal Proclamations aforementioned:-

Raw cotton, cotton linters, cotton waste and cotton yarns.

And We do hereby further declare that this Our Royal Proclamation shall take effect from the date of its publication in the London Gazette.

Given at Our Court at the Royal Pavilion, Aldershot Camp, this Twentieth day of August, in the year of our Lord one thousand nine hundred and fifteen, and in the Sixth Year of Our Reign.

God save the King.¹⁰

¹⁰ Ibid., pp. 295-96.

PROCLAMATION, DATED OCTOBER 14, 1915, REVISING THE LIST OF ARTICLES TO BE TREATED AS CONTRABAND OF WAR (STATUTORY RULES AND ORDERS, 1915, NO. 994).

BY THE KING.

A Proclamation revising the List of Articles to be treated as Contraband of War.

George R.I.

Whereas on the 23rd day of December, 1914, We did issue Our Royal Proclamation specifying the articles which it was Our intention to treat as contraband during the continuance of hostilities or until We did give further public notice; and

Whereas on the 11th day of March, and on the 27th day of May, and on the 20th day of August, 1915, We did, by Our Royal Proclamations of those dates, make certain additions to the lists of articles to be treated as contraband of war; and

Whereas it is expedient to make certain further additions to and amendments in the said lists:

Now, therefore, We do hereby declare, by and with the advice of Our Privy Council, that the lists of contraband contained in the Schedules to Our Royal Proclamation of the 23rd day of December, as subsequently amended by Our Proclamations of the 11th day of March, and of the 27th day of May, and of the 20th day of August aforementioned, are hereby withdrawn, and that in lieu thereof, during the continuance of the war or until We do give further public notice, the articles enumerated in Schedule I hereto will be treated as absolute contraband, and the articles enumerated in Schedule II hereto will be treated as conditional contraband.

Schedule I

1. Arms of all kinds including arms for sporting purposes, and their component parts.
2. Implements and apparatus designed exclusively for the manufacture of munitions of war, or for the manufacture or repair of arms or of war material for use on land or sea.
3. Lathes and other machines or machine tools capable of being employed in the manufacture of munitions of war.
4. Emery, corundum, natural and artificial (alundum), and carborundum, in all forms.
5. Projectiles, charges, and cartridges of all kinds, and their component parts.
6. Paraffin wax.
7. Powder and explosives specially prepared for use in war.
8. Materials used in the manufacture of explosives, including:-- Nitric acid and nitrates of all kinds; sulphuric acid; fuming sulphuric acid (oleum); acetic acid and acetates; barium chlorate and

perchlorate; calcium acetate, nitrate and carbide; potassium salts and caustic potash; ammonium salts and ammonia liquor; caustic soda, sodium chlorate and perchlorate; mercury; benzol, toluol, xylol, solvent naphtha, phenol (carbolic acid), cresol, naphthalene, and their mixtures and derivatives; aniline, and its derivatives; glycerine; acetone; acetic ether; ethyl alcohol; methyl alcohol; ether; sulphur; urea; cyanamide; celluloid.

9. Manganese dioxide; hydrochloric acid; bromide; phosphorus; carbon disulphide; arsenic and its compounds; chlorine; phosgene (carbonyl chloride); sulphur dioxide; prussiate of soda; sodium cyanide; iodine and its compounds.

10. Capsium and peppers.

11. Gun mountings, limber boxes, limbers, military wagons, field forges, and their component parts; articles of camp equipment and their component parts.

12. Barbed wire and the implements for fixing and cutting the same.

13. Range-finders and their component parts; searchlights and their component parts.

14. Clothing and equipment of a distinctively military character.

15. Saddle, draught, and pack animals suitable, or which may become suitable, for use in war.

16. All kinds of harness of a distinctively military character.

17. Hides of cattle, buffaloes, and horses; skins of calves, pigs, sheep, goats, and deer; and leather, undressed or dressed, suitable for saddlery, harness, military boots, or military clothing; leather belting, hydraulic leather, and pump leather.

18. Tanning substances of all kinds, including quebracho wood and extracts for use in tanning.

19. Wool, raw, combed or carded; wool waste; wool tops and noils; woollen or worsted yarns; animal hair of all kinds, and tops, noils and yarns of animal hair.

20. Raw cotton, linters, cotton waste, cotton yarns, cotton piece goods, and other cotton products capable of being used in the manufacture of explosives.

21. Flax; hemp; ramie; kapok.

22. Warships, including boats and their component parts of such a nature that they can only be used on a vessel of war.

23. Submarine sound-signalling apparatus.

24. Armour plates.

25. Aircraft of all kinds, including aeroplanes, airships, balloons and their component parts, together with accessories and articles suitable for use in connexion with aircraft.

26. Motor vehicles of all kinds and their component parts.

27. Tyres for motor vehicles and for cycles, together with articles or materials especially adapted for use in the manufacture or repair of tyres.

28. Mineral oils, including benzine and motor spirit.

29. Resinous products, camphor and turpentine (oil and spirit); wood tar and wood-tar oil.

30. Rubber (including raw, waste, and reclaimed rubber, solutions and jellies containing rubber, or any other preparations containing rubber, balata, and gutta-percha, and the following varieties of rubber, viz.:--Borneo, Guayule, Jelutong, Palembang, Pontianac, and all other substances containing caoutchouc), and goods made wholly or partly of rubber.

31. Rattans.

32. Lubricants.

33. The following metals:--Tungsten, molybdenum, vanadium, sodium, nickel, selenium, cobalt, haematite pig-iron, manganese, electrolytic iron, and steel containing tungsten or molybdenum.

34. Asbestos.

35. Aluminium, alumina, and salts of aluminium.

36. Antimony, together with the sulphides and oxides of antimony.

37. Copper, unwrought and part wrought; copper wire; alloys and compounds of copper.

38. Lead, pig, sheet, or pipe.

39. Tin, chloride of tin, and tin ore.

40. Ferro alloys, including ferro-tungsten, ferro-molybdenum, ferro-manganese, ferro-vanadium, and ferro-chrome.

41. The following ores:--Wolframite, scheelite, molybdenite, manganese ore, nickel ore, chrome ore, haematite iron ore, iron pyrites, copper pyrites and other copper ores, zinc ore, lead ore, arsenical ore, and bauxite.

42. Maps and plans of any place within the territory of any belligerent, or within the area of military operations, on a scale of 4 miles to 1 inch or any larger scale, and reproductions of any scale, by photography or otherwise, of such maps or plans.

Schedule II

1. Foodstuffs.

2. Forage and feeding stuffs for animals.

3. Oleaginous seeds, nuts and kernels.

4. Animal, fish, and vegetable oils and fats, other than those capable of use as lubricants, and not including essential oils.

5. Fuel, other than mineral oils.

6. Powder and explosives not specially prepared for use in war.

7. Horseshoes and shoeing materials.

8. Harness and saddlery.

9. The following articles, if suitable for use in war:--Clothing, fabrics for clothing, skins and furs utilizable for clothing, boots and shoes.

10. Vehicles of all kinds, other than motor vehicles, available for use in war, and their component parts.

11. Railway materials, both fixed and rolling stock, and materials for telegraphs, wireless telegraphs, and telephones.

12. Vessels, craft, and boats of all kinds; floating docks and their component parts; parts of docks.
13. Field glasses, telescopes, chronometers, and all kinds of nautical instruments.
14. Gold and silver in coin or bullion; paper money.

Given at Our Court at Buckingham Palace, this fourteenth day of October, in the year of our Lord one thousand nine hundred and fifteen, and in the Sixth year of Our Reign.

God save the King.¹¹

¹¹Ibid., pp. 296-99.